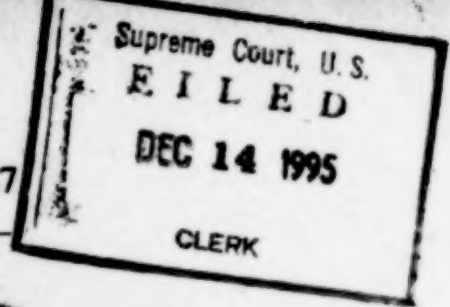


(4)
No. 95-157



IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

UNITED STATES OF AMERICA, PETITIONER

v.

CHRISTOPHER LEE ARMSTRONG, ET AL.

**ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

JOINT APPENDIX

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Certiorari Granted October 30, 1995**

242 m

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EDITOR'S NOTE

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (LOS ANGELES)

CRIMINAL DOCKET FOR CASE
No. 92-CR-336-ALL

USA

v.

ARMSTRONG, ET AL.

ASSIGNED TO: JUDGE CONSUELO B. MARSHALL
DKT No. is 2:92-m-00693

Christopher Lee Armstrong
aka
Chris Armstrong, *defendant*

Filed: 4/21/92

Appeal

- 1/6/92 152 Fld request for crt to review prev fld applic for review of ord setting conds of rel fld by Juliet Ireland dtd 9/3/92 in prep for 1/8/93 bail hrg as to Christopher Lee Armstrong (mc) [Entry date 01/08/93]
- 4/3/92 1 COMPLAINT Christopher Lee Armstrong (1) count(s) cmp Magistrate Judge Elgin C. Edwards [2:92-m-693] (cshl) [Entry date 04/09/92]
- 4/3/92 — BENCH WARRANT issued for Christopher Lee Armstrong by Magistrate Judge Elgin C. Edwards [2:92-m-693] (cshl) [Entry date 04/09/92]
- 4/3/92 1 COMPLAINT Aaron Hampton (3) count(s) cmp Magistrate Judge Elgin C. Edwards [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/3/92 — BENCH WARRANT issued for Aaron Hampton by Magistrate Judge Elgin C. Edwards [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/3/92 1 Fld COMPLAINT Robert Rozelle (2) count(s) cmp Magistrate Judge Elgin C. Edwards [2:92-m-693] (bh) [Entry date 04/23/92]
- 4/3/92 — BENCH WARRANT issued for Robert Rozelle by Magistrate Judge Elgin C. Edwards [2:92-m-693] (bh) [Entry date 04/23/92]
- 4/3/92 1 Fld COMPLAINT Shelton Auntwan Martin (4) count(s) cmp Magistrate Judge Elgin C. Edwards [2:92-m-693] (bh) [Entry date 04/23/92]

- 4/3/92 — BENCH WARRANT issued for Shelton Auntwan Martin by Magistrate Judge Elgin C. Edwards [2:92-m-693] (bh) [Entry date 04/23/92]
- 4/8/92 2 Fld Report commencing criminal action dft as to Christopher Lee Armstrong arrested on 4/8/92 [2:92-m-693] (cshl) [Entry date 04/09/92]
- 4/8/92 3 MINUTES: first appearance of Christopher Lee Armstrong on cmplt, dft arrn, states t/n as Christopher Lee Armstrong, Attorney Guy Iverson, appted, dfpd, present; bail set at: \$250,000 ab w/cash dep of \$4,000, w/affd of surety no just of \$50,000 by dfts mother, w/\$100,000 just affd of surety by uncle Beverly Green, \$150,000 by other sureties and w/deed of prop, psa int supv, bail subject to nebbia and waivable by govt, trav rest to CDC, alcohol/drug testing per psa, residence w/uncle Green, not possess firearms or be in the presence of anyone using firearms, avoid places of egress, not ill use or possess drugs or be in the presence of anyone ill using or possessing for Christopher Lee Armstrong, preliminary exam set for 4/22/92 at 4:30 pm, PIA set for 4/27/92 at 8:30 am, dft commtd to cust of usm C/R: tape no 45 and 46 by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/09/92]
- 4/8/92 4 Fld notice dir dft to app for prelim hrg and for arrn on indict/info [2:92-m-693] (cshl) [Entry date 04/09/92]
- 4/8/92 5 Fld notice of req for detn [2:92-m-693] (cshl) [Entry date 04/09/92]

- 4/8/92 6 Fld CJA Form 23 (Financial Affidavit) as to Christopher Lee Armstrong [2:92-m-693] (cshl) [Entry date 04/09/92]
- 4/8/92 7 Fld Report commencing criminal action dft as to Aaron Hampton arrested on 4/8/92 [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/8/92 8 MINUTES: first appearance of Aaron Hampton on cmplt, dft arrn, states t/n as chrgd, Attorney Paula Elden, apptd, panel, present; bail set at: temp detained for Aaron Hampton, preliminary exam set for 4/22/92 at 4:30 pm, PIA set for 4/27/92 at 8:30 am, detention hearing set for 4/9/92 at 2:00 pm govt moves for detn C/R: tape no 45 by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/8/92 9 Fld notice dir dft to app for prelim hrg and for arrn on indict/info [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/8/92 10 Fld notice of req for detn [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/8/92 11 Fld CJA Form 23 (Financial Affidavit) as to Aaron Hampton [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/8/92 21 Fld BENCH WARRANT returned executed as to Christopher Lee Armstrong 4/8/92 [2:92-m-693] (cshl) [Entry date 04/17/92]
- 4/8/92 22 Fld BENCH WARRANT returned executed as to Aaron Hampton 4/8/92 [2:92-m-693] (cshl) [Entry date 04/17/92]

- 4/9/92 12 MINUTES: Case called for perm detn hrg, dft, cust, present, atty Elden, panel, present, court finds prop cause to believe that the offense so chrgd has been commtd and that the dft commtd it, court finds pres under 18:3142e has not been rebutted and orders dft perm detained, detention hearing satisfied C/R: tape no 47 by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/9/92 13 Fld ORDER of Detn of Aaron Hampton pending Trial by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/10/92]
- 4/13/92 14 Fld app for reconsideration of ord setting cond of release/detn ORDER by Magistrate Judge Carolyn Turchin bond hearing set for 4/13/92 at 2:00 pm (cc: all counsel) [2:92-m-693] (cshl) [Entry date 04/17/92]
- 4/13/92 15 MINUTES: Govt app for reconsideration of detn is cont to 4/15/92 at 2:00 pm before Judge Turchin at the req of both cnsl C/R: tape no N/R by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/17/92]
- 4/13/92 16 Fld SUBSTITUTION of Attorney: replacing Guy Iverson with Carl K. Osborne apprvd by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/17/92]
- 4/15/92 17 Fld opposition to application for reconsideration of order setting conditions of release as to Christopher Lee Armstrong [2:92-m-693] (cshl) [Entry date 04/17/92]

- 4/15/92 18 MINUTES: Case called dft, cust, bnd present, atty Osborne, retd, present, govts app for bail review re perm detn, mtn is granted, witnesses CST, court finds prob cause to believe that the offense so chrgd has been committed and that the dtf commtd it, exhibits marked, court finds pres undetr 18:31432e has not been rebutted and orders dft perm detained, bond hearing satisfied C/R: tape no 50 and 51 by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/17/92]
- 4/15/92 19 Fld ORDER of Detn of Christopher Lee Armstrong pending Trial by Magistrate Judge Carolyn Turchin [2:92-m-693] (cshl) [Entry date 04/17/92]
- 4/15/92 20 Fld exhibit and witnesses list [2:92-m-693] (cshl) [Entry date 04/17/92]
- 4/21/92 23 Fld INDICTMENT counts filed against Christopher Lee Armstrong (1) count(s) 1, 2, 5-8, 3-4, 9, Robert Rozelle (2) count(s) 1, 5, 3-4, Aaron Hampton (3) count(s) 1, 2, 6-8, 9, Freddie Mack (4) count(s) 1, 2, Shelton Auntwan Martin (5) count(s) 1, 3-4, 5 (bh) [Entry date 04/23/92]
- 4/21/92 — Docket Modification (Utility Event) preliminary exam satisfied Indict fld (bh) [Entry date 04/24/92]
- 4/21/92 — BENCH WARRANT issued for Robert Rozelle by Magistrate Judge Rupert J. Groh Jr. (bh) [Entry date 04/24/92]
- 4/21/92 — BENCH WARRANT issued for Freddie Mack by Magistrate Judge Rupert J. Groh Jr. (bh) [Entry date 04/24/92]

- 4/21/92 — BENCH WARRANT issued for Shelton Auntwan Martin by Magistrate Judge Rupert J. Groh Jr. (bn) [Entry date 04/24/92]
- 4/21/92 — Docket Modification (Utility Event) Detention for Robert Rozelle (bh) [Entry date 04/24/92]
- 4/21/92 — Docket Modification (Utility Event) Detention for Freddie Mack (bh) [Entry date 04/24/92]
- 4/21/92 — Docket Modification (Utility Event) Detention for Shelton Auntwan Martin (bh) [Entry date 04/24/92]
- 4/21/92 24 Fld cr72 by AUSA Nick Hanna as to Christopher Lee Armstrong (bh) [Entry date 04/24/92]
- 4/21/92 25 Fld cr72 by AUSA Nick Hanna as to Robert Rozelle (bh) [Entry date 04/24/92]
- 4/21/92 26 Fld cr72 by AUSA Nick Hanna as to Aaron Hampton (bh) [Entry date 04/24/92]
- 4/21/92 27 Fld cr72 by AUSA Nick Hanna as to Freddie Mack (bh) [Entry date 04/24/92]
- 4/21/92 28 Fld cr72 by AUSA Nick Hanna as to Shelton Auntwan Martin (bh) [Entry date 04/24/92]
- 4/27/92 31 MINUTES: dft Christopher Lee Armstrong, Aaron Hampton arraigned and sts T/N as charged; Retained Attorney Carl K Osborne for dft Armstrong, Crt appts cnsl Panel atty Timothy C Lannen for dft Hampton, both are present; case reassigned to Judge Consuelo B. Marshall, arraignment con'd 4/27/92 at 1:30 pm C/R: Tape #693 by Mag Judge Joseph Reichmann (1j) [Entry date 05/06/92]

- 4/27/92 32 Fld stmnt of dft's constitutional rights as to Christopher Lee Armstrong (1j) [Entry date 05/06/92]
- 4/27/92 33 Fld DESIGNATION AND APPEARANCE of Attorney for Christopher Lee Armstrong by Carl K. Osborne (1j) [Entry date 05/06/92]
- 4/27/92 34 Fld stmnt of dft's constitutional rights as to Aaron Hampton (1j) [Entry date 05/06/92]
- 4/27/92 35 Fld CJA Form 23 (Financial Affidavit) as to Aaron Hampton (1j) [Entry date 05/06/92]
- 4/27/92 36 MINUTES: Plea & Trial setting dft Christopher Lee Armstrong, Aaron Hampton arraigned; N/G plea entered as to Armstrong ct 1 & 9 and as to Hampton Ct 1, 2, 6-9; Attorneys present; Dfts Robert Rozelle, Freddie Mack and Shelton Auntwan Martin are fugitives, Hrg on motns and for status hearing set 6/29/92 at 1:30 pm, pretrial motions shall be fld NLT 6/8/92, any oppos to such mot shall be fld NLT 6/15/92; any reply to oppos shall be fld NLT 6/22/92, jury trial set 6/30/92 at 9:30 am C/R: E. Mays by Judge Consuelo B. Marshall (1j) [Entry date 05/06/92]
- 4/29/92 29 Fld BENCH WARRANT returned unexecuted for Freddie Mack (sm) [Entry date 05/04/92]
- 4/29/92 30 Fld BENCH WARRANT returned unexecuted for Robert Rozelle (sm) [Entry date 05/04/92]

- 5/6/92 37 Fld dft Christopher Lee Armstrong's applica for review of Order setting conditions of detn pending trial & ORDER by Judge Consuelo B. Marshall — It is ORD that this applic is granted cal for hrg before Judge Consuelo B. Marshall, bond hearing set 5/14/92 at 8:00 am (1j) [Entry date 05/11/92]
- 5/14/92 38 MINUTES: bond hearing — Dft's motn to set bail — Crt questions PSA and counsel. PSA to confirm prior employment. Crt finds dft is not a flight risk, but is a danger to the community, bond hearing cont'd 5/20/92 at 8:00 am C.R: E. Mays by Judge Consuelo B. Marshall (1j) [Entry date 05/21/92]
- 5/18/92 39 Fld Pltf's EX PARTE Application for Ord compelling dfts to submit undisguised handwriting exemplars. Lodged Ord. (1j) [Entry date 05/21/92]
- 5/18/92 40 Fld Supplemental declr of Lawrence H. Cho in support of Ord for handwriting exemplars regarding [39-1] (1j) [Entry date 05/21/92]

- 5/18/92 41 Fld ORDER by Magistrate Judge George H. King granting motion [39-1] It is ORD — Dft Armstrong will provide to authorized rep of the Bureau of Alcohol, Tobacco, and Firearms and the Inglewood Police Dept undisguised handwriting exemplars purs to the directions and instructions of the agents. Dft shall provide the type of handwriting requested, that is for example, printing and/or cursive, and shall cooperate in all respects in providing the exemplars. (lj) [Entry date 05/26/92]
- 5/19/92 — ORDER by Judge Consuelo B. Marshall granting motion [43-1])lj) [Entry date 05/26/92]
- 5/20/92 42 MINUTES: bond hearing as to dft Christopher L. Armstrong's motn to set bail, Bail is argued and denied. Crt finds that dft is a danger to the community, but not a flight risk for Christopher Lee Armstrong C/R: E. Mays by Judge Consuelo B. Marshall (lj) [Entry date 05/26/92]
- 5/20/92 43 EX PARTE Application for Ord compelling dfts to su (lj) [Entry date 05/26/92]
- 5/22/92 44 Fld Ntc of mot and MOTION to compel disclosure of the identities and locations of informants or to dismiss the indictment; Memo of PA by defendant Aaron Hampton returnable on 7/13/92 at 1:30 pm (lj) [Entry date 05/26/92]

- 5/28/92 50 Fld ntc of mot and mot for pretrial discovery and for disclosure of informant by defendant Christopher Lee Armstrong, discovery requests, memo of pts and auth in support thereof returnable on 7/13/92 (mc) [Entry date 06/23/92]
- 6/4/92 51 Fld SUBSTITUTION of Attorney: Lydia Sanchez replacing attorney Carl K. Osborne for Christopher Lee Armstrong by Judge Consuelo B. Marshall (mc) [Entry date 06/23/92]
- 6/8/92 52 Fld STIP and order re cont of trial date and excl time by Judge Consuelo B. Marshall: It is so ord that the trial date be cont to 7/28/92. The per from 5/6/92 to 5/20/92 and 5/22/92 to 7/13/92 is excl time. (mc) [Entry date 06/23/92]
- 6/9/92 53 Fld EXCLUDABLE DELAY FORM as to Christopher Lee Armstrong, Robert Rozelle, Aaron Hampton, Freddie Mack, Shelton Auntwan Martin. Excl per from 5/6/92 to 5/20/92 and 5/22/92 to 7/13/92 (mc) [Entry date 06/23/92]
- 6/9/92 54 MINUTES: Stat conf set for 6/29/92 is taken off cal. C/R: n/a by Judge Consuelo B. Marshall (mc) [Entry date 06/23/92]
- 6/11/92 45 Fld Report commencing criminal action DEFENDANT as to Shelton Auntwan Martin arrested on 6/11/92 (bh) [Entry date 06/11/92]
- 6/11/92 46 Fld CJA Form 23 (Financial Affidavit) as to Shelton Auntwan Martin (bh) [Entry date 06/11/92]
- 6/11/92 47 Fld NOTICE of request for det as to dft Shelton Auntwan Martin (bh) [Entry date 06/11/92]

- 6/11/92 48 MINUTES: First appr of Shelton Auntwan Martin, Atty Barbara O'Connor apptd-DFPD present. Detention Bond set for Shelton Martin. Arrn set for 6/15/92 at 8:30 am C/R: tape no 63 by Magistrate Judge Rupert J. Groh Jr. (bh) [Entry date 06/11/92]
- 6/11/92 49 NOTICE directing dft Shelton Auntwan Martin to appr for PIA. (bh) [Entry date 06/11/92]
- 6/15/92 55 MINUTES: Dft Shelton Auntwan Martin arraigned; not guilty plea entered; Attorney Barbara O'Connor PD present. Case prev assigned to Judge Consuelo B. Marshall. Jury trial set for 7/28/92 at 9:30 am. C/R: Tape nos. 700/701 by Magistrate Judge Carolyn Turchin (mc) [Entry date 06/23/92]
- 6/15/92 56 Fld stmt of dft's constitutional rights as to Shelton Auntwan Martin (mc) [Entry date 06/23/92]
- 6/17/92 57 Fld BENCH WARRANT returned executed as to Shelton Auntwan Martin 6/11/92 (mc) [Entry date 06/23/92]
- 6/19/92 58 Fld info establishing prior fel narcotics conviction of dft Aaron Hampton (mc) [Entry date 06/24/92]
- 6/24/92 70 Fld ntc of mot, mot to strike prejudicial and inflammatory surplusage from indict, memo, decl of cnsl, exh of pts and auth by dft Shelton Auntwan Martin returnable on 7/13/92 (mc) [Entry date 07/13/92]
- 6/30/92 59 Fld EX PARTE Applic by pltf for ord perm rel of G/J testimony (m) [Entry date 07/01/92]

- 7/2/92 63 Fld ORDER perm rel of G/J testimony by Judge Consuelo B. Marshall. It is ord that pltf USA is dir to supply dfts through their cnsl of rec G/J testimony. (mc) [Entry date 07/10/92]
- 7/6/92 60 Fld EX PARTE Applic by dft Shelton Auntwan Martin for ord shortening time, decl of cnsl (mc) [Entry date 07/07/92]
- 7/6/92 61 Fld NOTICE of Joinder by dft Shelton Auntwan Martin joining mot for pretrial discovery, mot for disclosure of informant and mot to compel disclosure of the identities and locations of informants or to dismiss indict (mc) [Entry date 07/07/92]
- 7/7/92 62 Fld EX PARTE Applic by dft Shelton Auntwan Martin for ord shortening time, decl of cnsl (mc) [Entry date 07/07/92]
- 7/8/92 64 Fld govt's ntc of filing in camera, under seal (mc) [Entry date 07/10/92]
- 7/8/92 65 Fld SEALED doc: govt's in camera submission of decl of Agent Jeffrey Cochran (mc) [Entry date 07/10/92]
- 7/8/92 66 Fld ORDER shortening time by Judge Consuelo B. Marshall It is hereby ord that time be shortened to allow filing and serving of his mot for Discl of Information re: Informant as to Shelton Auntwan Martin (mc) [Entry date 07/10/92]
- 7/8/92 67 Fld ntc of mot and mot for disclosure of information re informant, memo of pts and auth, decl of cnsl, exh by dft Shelton Auntwan Martin returnable on 7/13/92 (mc) [Entry date 07/10/92]

- 7/8/92 68 Fld govt's response to dfts mots for discovery and disclosure of informants, memo of pts and auth, govt's in camera filing re informant (mc) [Entry date 07/13/92]
- 7/9/92 69 Fld ORDER shortening time by Judge Consuelo B. Marshall It is hereby ord that time be shortened to allow the filing and serving of this Mot to Strike Prejudicial and Inflammatory Surplusage from the Indict (mc) [Entry date 07/13/92]
- 7/9/92 72 Fld STIPULATION and order re cont of trial date and exl time by Judge Robert M. Takasugi: It is so ord that the pres trial date is cont to 8/18/92 at 9:30 am. The per frm 6/11/92 to 8/18/92 is excl (mc) [Entry date 07/17/92]
- 7/9/92 73 Fld EXCLUDABLE DELAY FORM as to Christopher Lee Armstrong, Aaron Hampton, Shelton Auntwan Martin. Excl per frm 6/11/92 to end 8/18/92 (mc) [Entry date 07/17/92]
- 7/13/92 71 Fld of Joinder by dft Aaron Hampton joining motion for pretrial discovery and disclosure of informant (mc) [Entry date 07/15/92]

- 7/13/92 86 MINUTES: Mots-Martin: to strike prejudicial and inflammatory surplusage from indict GR, GR as to items 1 & 6. GR as to item #4 to be provided to defense cnsl f/w, GR as to items 5 & 7 to be provided to defense cnsl 2 wks prior to trial, as to item #2, govt's cnsl to inquire of informants of dft's request to interview informants, GR as to items 9 & 10. Mot-Hampton: same ruling as to identical mot fld by dft Martin. GR as to item #5, to be provided f/w to defense cnsl, GR as to item #6, to be provided to defense cnsl 2 wks prior to trial. Mots-Armstrong: GR as to items #6, 8, 10, 37, 38, 43. GR in part/denied as to items 25, 35. GR as to item 41 as to business address only. No ruling as to item #32 re personnel file of Mr. Campbell. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 08/13/92]
- 7/17/92 75 Fld ORDER by Judge Consuelo B. Marshall. It is hereby ord that in the absence of justification by BOP dft Shelton Auntwan Martin be allowed visitation at the MDC by his fiancée, Trina Williams (mc) [Entry date 07/22/92]
- 7/20/92 74 Fld ntc of mot, mot for for discovery and ord dismissal of indict for selective prosecution, memo of pts and auth, decl by df Shelton Auntwan Martin returnable on 8/17/92 (mc) [Entry date 07/20/92]

- 7/24/92 76 Fld EX PARTE Applic by dft Aaron Hampton for an ord perm expenditure of CJA funds for an investigator, decl of Timothy C. Lannen (mc) [Entry date 07/29/92]
- 7/24/92 77 Fld NOTICE of Joinder by dft Christopher Lee Armstrong joining mot to dismiss indict for selective prosecution by dft Sheldon Auntwan Martin [74-2] (mc) [Entry date 07/30/92]
- 7/27/92 78 Fld ORDER permitting expenditure of CJA funds for an investigator by Judge Consuelo B. Marshall (mc) [Entry date 07/30/92]
- 7/30/92 79 Fld NOTICE of Joinder by dft Aaron Hampton joining mot for discovery and ord dismissal of indict for selective prosecution [74-1], [74-2] (mc) [Entry date 08/06/92]
- 8/6/92 80 Fld Report commencing criminal action DEFENDANT as to Robert Rozelle arrested on 8/5/92 (mc) [Entry date 08/07/92]
- 8/6/92 81 MINUTES: First appearance of Robert Rozelle on indict Attorney present. Govt mvs for detn/granted w/o prej. Bail set at: detn for Robert Rozelle, post indict arrn set for 8/10/92 at 8:30 am. C/R: Tape no. 60 by Magistrate Judge George H. King (mc) [Entry date 08/07/92]
- 8/6/92 82 Fld ORDER of Detention of Robert Rozelle after hrg by Magistrate Judge George H. King (mc) [Entry date 08/07/92]
- 8/6/92 83 Fld NOTICE of request for detn by pltf (mc) [Entry date 08/07/92]

- 8/6/92 84 Fld CJA Form 23 (Financial Affidavit) as to Robert Rozelle (mc) [Entry date 08/07/92]
- 8/6/92 85 Fld NOTICE dir dft to app for arrn on indict/info by dft Robert Rozelle (mc) [Entry date 08/07/92]
- 8/10/92 89 MINUTES: Dft Robert Rozelle arrn; Attorney Timothy C. Lannen pres, arrn cont to 8/10/92 at 11:30 am. C/R: Tape no. 709 by Magistrate Judge Robert M. Stone (mc) [Entry date 08/13/92]
- 8/10/92 90 Fld stmt of dft's constitutional rights as to Robert Rozelle (mc) [Entry date 08/13/92]
- 8/10/92 94 Fld STIPULATION and order re cont of trial date and excl time by Judge Consuelo B. Marshall: It is so ord that trial date cont to 10/6/92. The per from 8/18/92 to 10/6/92 is excl time. (mc) [Entry date 08/26/92]
- 8/10/92 95 Fld EXCLUDABLE DELAY FORM as to Christopher Lee Armstrong, Aaron Hampton, Shelton Auntwan Martin. Excl per began 8/18/92 and end on 10/6/92 (mc) [Entry date 08/26/92]
- 8/10/92 112 MINUTES: Dft Robert Rozelle arrn; not guilty plea ent; Attorney present. Crt ord matter set for jury trial on 10/6/92 at 9:30 am. Crt sets matter for hrg on mots and for stat conf on 9/21/92 at 1:30 pm. All mots shl be fld on or bef 9/1/92, any opp to such mots shl be fld on or bef 9/7/92, any reply to opp shl be fld on or bef 9/14/92. Esther May by Judge Consuelo B. Marshall (mc) [Entry date 09/24/92]

- 8/11/92 87 Fld BENCH WARRANT returned executed as to Robert Rozelle 8/5/92 (mc) [Entry date 08/13/92]
- 8/11/92 88 Fld govt's opp to dfts mots for discovery and/or dismiss of indict for selective prosecution, memo of p/a (mc) [Entry date 08/13/92]
- 8/13/92 91 Fld NOTICE of Joinder by defendant Robert Rozelle joining motion to dismiss indict returnable on 8/17/92 [74-2] (mc) [Entry date 08/18/92]
- 8/17/92 105 MINUTES: Dfts mot for discovery and or/dism of indict cont to 9/8/92 at 8:00 am. Reply mots shl be fld nlt 8/27/92. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 09/08/92]
- 8/19/92 93 Fld SEALED doc by pltf USA: govt's ex parte applic for ord shortening time to file mot for taking of deposition (mc) [Entry date 08/26/92]
- 8/20/92 92 Fld govt's opp to govt's mot for taking dep of a wit, memo of p/a by Robert Rozelle in opp (mc) [Entry date 08/25/92]
- 8/20/92 104 Fld SEALED doc by dft Shelton Auntwan Martin (mc) [Entry date 09/03/92]
- 8/21/92 96 Fld opp by dft Aaron Hampton to govt's mot for taking deposition of a wit (mc) [Entry date 08/26/92]
- 8/21/92 97 Fld of Joinder by dft Shelton Auntwan Martin in mot of dft Robert Rozelle (mc) [Entry date 08/26/92]
- 8/21/92 98 Fld supplemental decl in support of dft's opp to govt's mot for deposition as to Shelton Auntwan Martin (mc) [Entry date 08/26/92]

- 8/21/92 99 Fld NOTICE of in camera filing by pltf USA (mc) [Entry date 08/26/92]
- 8/21/92 100 Fld SEALED doc by pltf USA: govt's in camera submission of decl of Agent Jeffrey Cochran re: former testimony of confidential informant, exh A attached (mc) [Entry date 08/26/92]
- 8/24/92 101 Fld NOTICE by dft Shelton Auntwan Martin of under seal filing (mc) [Entry date 08/26/92]
- 8/25/92 102 MINUTES: On the crt's own mot, govt's mot for the taking of the depo of wit is set for oral arg on 8/31/92 at 1:30 pm. C/R: N/A by Judge Consuelo B. Marshall (mc) [Entry date 08/31/92]
- 8/25/92 103 Fld supplemental opp to govt's mot for taking depo of a wit, joinder in mots of dft Robert Rozelle and Shelton Auntwan Martin by dft Aaron Hampton (mc) [Entry date 08/31/92]
- 8/31/92 107 MINUTES: Govt's crsl w/d mot to take depo of wit. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 09/11/92]
- 9/3/92 106 Fld applic for review of ord setting conds of rel/detn, pend trial and ORDER. Hrg set for 9/8/92 at 8:00 am. (mc) [Entry date 09/08/92]
- 9/8/92 110 MINUTES: Mot dfts for discovery granted, mot to dismiss indict taken off cal. Cont to 9/16/92 at 8:00 am for stat conf. Mot dft Armstrong to set bail arg and den. Crt finds that dft Armstrong is a danger to the community. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 09/22/92]

- 9/16/92 108 Fld SEALED doc by pltf USA: govt's mot for reconsid of ord for discovery re selective prosecution, memo of p/a, decls (mc) [Entry date 09/16/92]
- 9/16/92 111 MINUTES: Stat conf is cont to 9/21/92 at 1:30 pm. C/R: n/a by Judge Consuelo B. Marshall (mc) [Entry date 09/22/92]
- 9/17/92 109 Fld RECEIPT for Transcripts of proceedings held on: 9/8/92 (mc) [Entry date 09/18/92]
- 9/21/92 114 MINUTES: Stat conf and govt's mot for reconsid cont to 10/19/92 at 1:30 pm. Trial cont to 11/17/92 at 9:30 am. Opp to mots shl be fld nlt 10/5/92. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 10/09/92]
- 10/5/92 113 Fld dft's opp to govt's mot for reconsid of ord for disc re selective prosecution, decls of Marla Beller and cnsl by dft Shelton Auntwan Martin (mc) [Entry date 10/07/92]
- 10/8/92 115 Fld STIPULATION and order re cont of trial date and excl time by Judge Consuelo B. Marshall (mc) [Entry date 10/14/92]
- 10/9/92 116 Fld EXCLUDABLE DELAY FORM as to Christopher Lee Armstrong, Robert Rozelle, Aaron Hampton, Shelton Auntwan Martin. Excl per from 7/20 — 9/8, 9/16 — 10/19, 9/22 — 11/17 (mc) [Entry date 10/14/92]
- 10/19/92 117 MINUTES: Cont to 10/26/92 at 1:30 pm for stat conf. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 10/22/92]

- 10/26/92 120 MINUTES: Stat conf is cont to 11/2/92 at 1:30 pm. Lydia Sanchez, Phil Johnson and Julie Ireland are rel as cnsl for dft Armstrong. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 11/12/92]
- 11/2/92 118 MINUTES: David Reed is appt to represent Christopher Lee Armstrong. Mots cont to 11/16/92 at 1:30 pm, trial cont to 1/12/93 at 9:30 am. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 11/09/92]
- 11/9/92 119 Fld Joinder in selective enforcement discov mot by dft Christopher Lee Armstrong, supplemental decl by David R. Reed (mc) [Entry date 11/10/92]
- 11/12/92 121 Fld RULE 40 Documents received from Dist of Oklahoma at Oklahoma City as to Freddie Mack (mc) [Entry date 11/13/92]
- 11/13/92 122 Fld Report commencing criminal action DEFENDANT as to Freddie Mack arrested on 11/12/92 (mc) [Entry date 11/17/92]
- 11/13/92 123 Fld NOTICE of request for detn as to Freddie Mack (mc) [Entry date 11/17/92]
- 11/13/92 124 Fld CJA Form 23 (Financial Affidavit) as to Freddie Mack (mc) [Entry date 11/17/92]
- 11/13/92 125 MINUTES: First appearance of Freddie Mack on indict. Atty David Bortman pres. Bail set at: perm detn for Freddie Mack, PIA set for 11/16/92 at 8:30 am. C/R: no. 167 by Mag Judge Jay R. Irwin (mc) [Entry date 11/17/92]

- 11/13/92 126 Fld ORDER of Detention of Freddie Mack after hrg by Mag Judge Jay R. Irwin (mc) [Entry date 11/17/92]
- 11/13/92 127 Fld NOTICE dir dft to app for arrn on indict/info by dft Freddie Mack (mc) [Entry date 11/17/92]
- 11/16/92 128 MINUTES: Dft Freddie Mack arrn; Attorney David Bortman Panel pres, arrn cont to 11/16/92 at 11:30 am. C/R: Tape no. 255 by Magistrate Judge Elgin C. Edwards (mc) [Entry date 11/18/92]
- 11/16/92 129 Fld stmt of dft's constitutional rights as to Freddie Mack (mc) [Entry date 11/18/92]
- 11/16/92 130 MINUTES: Dft Freddie Mack arrn; not guilty plea ent. Attorney pres. Set for stat conf and hrg on mots on 1/4/93 at 1:30 pm, mots to be fld nlt 12/15/92, opp nlt 12/21/92, replies shl be fld nlt 12/28/92. Trial set for 1/12/93 at 9:30 am. C/R: Esther Mays by Consuelo B. Marshall (mc) [Entry date 11/19/92]
- 11/18/92 131 Fld BENCH WARRANT returned executed as to Freddie Mack 11/6/92 (mc) [Entry date 11/19/92]
- 11/30/92 132 Fld NOTICE of under seal filing by pltf USA (mc) [Entry date 12/01/92]
- 11/30/92 133 Fld SEALED doc by pltf USA: govt's supplemental decl of Robert Wall in support of govt's mot for reconsid of ord re discov on selective prosecution (mc) [Entry date 12/03/92]
- 11/30/92 137 MINUTES: Stat conf cont's to 12/4/92 at 2:30 pm. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 01/08/93]

- 12/4/92 134 MINUTES: Dfts mot re: selective prosecution arg and submitted w/o furth oral arg. Purs to oral stip, trial is adv to 1/5/93 at 9:30 am. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 12/07/92]
- 12/9/92 135 Fld EX PARTE Motion by dft Christopher Lee Armstrong for the appt of an investigator and ord thereon (mc) [Entry date 12/10/92]
- 12/9/92 135 Fld ORDER appt investigator by Judge Consuelo B. Marshall: It is hereby ord that Mr. David Reed has approval to retain lic investigator, William Solorzano, whose fees are not to exceed \$1,500.00 at time. (mc) [Entry date 12/10/92]
- 12/9/92 138 ORDER detention hearing set for 12/11/92 at 9:00 am. (cc: all counsel) (mc) [Entry date 01/08/93]
- 12/11/92 139 MINUTES: Detn hrg held as to Freddie Mack. Bail set: \$60,000 a/b, full just w/deeding, 3rd pty sur (dft's mother), int PSA supv, trvl rest to CDC, not ent premises of any airport, seaport term which perm exit from continental U.S. w/o Crt perm, not ent premises of any bus railroad, airport or seaport term which permits exit from area of rest trvl w/o Crt perm, not use or poss ill drugs, drug and alcohol testing as deemed nec by PSA, nt poss firearms/dest devices, reside w/mother and not reside elsewhere w/o perm of Crt or PSA, not use false names, turnover false identifications to PSA Bond set for Freddie Mack. C/R: Esther Mays by Judge (mc) [Entry date 01/08/93]

- 12/17/92 140 Fld AFFIDAVIT of sur (prpty) by Mattie J. Mack as to dft Freddie Mack. Re: prpty address: 465 Eldora Rd., Pasadena, CA 91104 and cc deed of trust Inst. no. 92-2343001. Sent to exh (mc) [Entry date 01/08/93]
- 12/17/92 141 Fld BOND AND CONDITIONS OF RELEASE \$60,000.00 a/b w/just affid of sur and deeding of prpty by dft's mother, trvl rest to CDC, PSA supv, not ent premises of any airport, seaport term which perm exit from continental U.S. w/o Crt perm, not ent premises of any bus, railroad, airport or seaport term which perm exit from area of rest trvl w/o Crt perm, not use or poss ill drugs, drug and alcohol test as deemed nec by PSA, not poss firearms/destructive devices, reside w/mother, could not reside elsewhere w/o perm of Crt and PSA, not use false names and turnover false identifications to PSA for Freddie Mack approved by Magistrate Judge Rupert J. Groh Jr. (mc) [Entry date 01/08/93]
- 12/22/92 136 Fld information establishing prior fel narcotics conv of Robert Rozelle (mc) [Entry date 12/28/92]
- 12/22/92 142 Fld supplemental filing re dft's mot for discov re selective prosecution, decl of cnsl, exh as to Shelton Auntwan Martin (mc) [Entry date 01/08/93]
- 12/28/92 143 Fld MOTION in limine to excl evid purs to Fed Rule of Evid 104 by dft Christopher Lee Armstrong, memo of p/a returnable on 1/5/93 (mc) [Entry date 01/08/93]

- 12/29/92 144 MINUTES: Christopher Armstrong, et al: Govt's mot for reconsid of Crt's ruling is den. C/R: N/A by Judge Consuelo B. Marshall (mc) [Entry date 01/08/93]
- 12/29/92 145 Fld EX PARTE Applic by dft Shelton Auntwan Martin for ord shortening time, decl of cnsl (mc) [Entry date 01/08/93]
- 12/30/92 146 Fld EX PARTE Applic by dft Shelton Auntwan Martin for ord shortening time, decl of cnsl (mc) [Entry date 01/09/93]
- 1/4/93 147 Fld Joinder by dft Aaron Hampton joining mot in limine to excl evid purs to Fed Rule of Evid 104 by dft Christopher Lee Armstrong returnable on 1/5/93 [143-1] (mc) [Entry date 01/08/93]
- 1/5/93 148 Fld MOTION in limine to excl evid by dft Freddie Mack returnable on 1/5/93 (mc) [Entry date 01/08/93]
- 1/5/93 149 Fld EX PARTE Applic by dft Christopher Lee Armstrong for perm to submit interim CJA vouchers for legal serv, decl of David Reed, ord thereon (mc) [Entry date 01/08/93]
- 1/5/93 — ENDORSED Order gr motion [149-1] by Judge Consuelo B. Marshall (mc) [Entry date 01/08/93]
- 1/5/93 150 MINUTES: Mot of dfts to dismiss indict is granted. Govt's mot to stay dismiss for 48 hrs is granted. Cont to 1/8/93 at 10 am as to dfts Martin, Armstrong and Rozelle for a stat conf and bail mots. Crt ord that Mack shl remain on bnd and upon same conds of rel. C/R: Esther Mays by Judge Consuelo B. Marshall (mc) [Entry date 01/08/93]

- 1/6/93 151 Fld NOTICE of Appeal to Circuit Court by pltf USA re ord dismiss indictment as to defendants Aaron Hampton, Robert Rozelle, Freddie Mack and Shelton Auntwan [150-2] (cc: all counsel) Fee Status: Bill wv (mc) [Entry date 01/08/93]
- 1/8/93 156 MINUTES: Govt's motion for stay of dismissal appeal granted. Motion of defendant Armstrong to set bail continued to 01/19/93 at 2:30 pm. Motion to set bail as to defendant Rozelle deemed to be moot, denied as to defendant Hampton. Motion granted as to defendant Martin as follows: \$15,000 a/b w/ full just and deed of property, in PSA supervision, not to possess firearms or dangerous devices, not associate w/ others who possess firearms, reside w/ uncle Mr. Fisher, travel restricted to CDC, not enter premises of egress from CDC, not use or possess false ID and turn over false ID to PSA, not contact with C/R: Esther Mays, by Judge Consuelo B. Marshall (mei) [Entry date 01/21/93]
- 1/11/93 153 Fld RECEIPT for Transcripts of proceedings held on: 12/4/92 as to Christopher Lee Armstrong (mc) [Entry date 01/12/93]
- 1/12/93 154 Fld ORDER for time schedule transcript designation due: 1/29/93, C/R transcripts due: 2/28/93, Appellant's briefs due: 4/9/93, Appellee's reply brief due: 5/9/93 Appellant's filing of excerpts of record due: 5/23/93 (mc) [Entry date 01/14/93]
- 1/14/93 155 Fld RECEIPT for Transcripts of proceedings held on: 1/5/93 (mc) [Entry date 01/15/93]

- 1/19/93 — Docket Modification (Utility Event) As to Robert Rozelle and Aaron Hampton, motion to set bail as to defendant Rozelle deemed to be moot, denied as to defendant Hampton (mei) [Entry date 01/21/93]
- 1/19/93 157 MINUTES: As to defendant Armstrong present and in custody, motion of government's counsel to dismiss indictment as to defendant Armstrong granted. Defendant's motion to set bail denied, court finds that defendant is a danger to the community. Court orders that defendant remain detained, exhibits 1, 2, 3, 3A, and 4 are admitted into evidence C/R: Esther Mays, by Judge Consuelo B. Marshall (mei) [Entry date 01/21/93]
- 1/19/93 — Docket Modification (Utility Event) case dismissed as to Christopher Lee Armstrong (1) as to all counts 1-9. Motion of government's counsel to dismiss Indictment as to defendant Armstrong is granted (mei) [Entry date 01/21/93]
- 1/20/93 158 Fld NOTICE of Appeal to Circuit Court by plaintiff USA, as to defendant Christopher Lee Armstrong [157-1] Govt appealing order dismiss indictment as to defendant Armstrong (cc: all counsel) Fee Status: fees wvd, forms given, TDO given (mei) [Entry date 01/21/93]

GENERAL DOCKET FOR
NINTH CIRCUIT COURT OF APPEALS

Court of Appeals Docket
No. 93-50031

USA

v.

ARMSTRONG, ET AL.

APPEAL FROM: CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES

Filed: 1/13/93
Nsuit: 0

- 1/13/93 1 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Filed in D.C on 12/22/92.; setting schedule as follows: transcript shall be ordered by 1/29/93 for USA; transcript shall be filed by 3/1/93; appellants' briefs, excerpts due by 4/9/93 for USA; appellees' brief due 5/10/93 for Christopher Lee Armstrong; appellants' reply brief due by 5/24/93 for USA. (RT required: yes.) (Sentence imp: N/A.) [93-50031] (jhc) [93-50031]
- 1/19/93 2 Filed Appellant USA's motion to expedite appeal. -promo-[93-50031] served on 1/15/93 [2289485] [93-50031] (ec) [93-50031]
- 2/16/93 4 Filed order (Deputy Clerk: mg) the court is in receipt of the Govt's motions to consolidate 93-50031 and 93-50057 and to expedite the appeals. The motions are granted. Appeals 93-50031 and 93-50057 are consolidated. The expedited briefing schedule is as follows: opening brief due Mar 1, 1993; aple's brief due Mar 31, 1993. Optional reply brief due 14 days from service ans brief. Court records do not currently reflect that DC has issued the COR. Apl't shall monitor the issuance of the certificate ... These appeals shall be placed on the next available calendar after the filing of the ans brief. (Motion recvd 2/9/93) [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 3/3/93 5 Filed original and 15 copies Appellant USA in 93-50031, Appellant USA in 93-50057 opening brief (Informal: n) 37 pages and five excerpts of record in 1 volume; served on 3/1/93 [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 3/29/93 6 14 day oral extension by phone of time to file appellee's brief denied—case expedited. [93-50031, 93-50057] (ra) [93-50031 93-50057]
- 4/2/93 8 Filed original and 15 copies Appellee Shelton Auntwan Martin in 93-50031 brief, 25 pages, 5 suppl. Exc.: served on 3/31/93 minor defcy: no Statement of Rel. Cases Notified counsel. [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/5/93 9 Filed motion of defendant Freddie Mack for joinder in co-defendant Shelton Auntwan Martin's ans brief and deputy clerk order: (Deputy Clerk: cg) granting motion & order [2327428-1] in 93-50031, 93-50057 (Motion recvd 3/31/93) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/8/93 11 Filed original and 15 copies appellees Aaron Hampton, Robert Rozelle 14 pages brief, ; served on 3/31/93 [93-50031] (ec) [93-50031]
- 4/12/93 14 Received Appellee Shelton Auntwan Martin in 93-50031 satisfaction of (minor) brief deficiency. (stmt. of related cases) [93-50031, 93-50057] (jlc) [93-50031 93-50057]

- 4/15/93 13 Filed motion and order: (Deputy Clerk: cag) granting motion of Christopher Lee Armstrong's to join in the ans brief of Co-Def Shelton C. Martin is granted. The optional reply brief shall be due 14 days from the date of this order. in 93-50057 (Motion recvd 4/12/93) [93-50031, 93-50057] (tsp) [93-50031 93-50057]
- 4/19/93 15 Filed original and 15 copies USA in 93-50031, USA in 93-50057 reply brief, (Informal: n) 12 pages; served on 4/15/93 [93-50031, 93-50057] (ft) [93-50031 93-50057]
- 4/21/93 17 Filed: (Deputy Clerk: cag) denying motion & order to file late brief. By way of the 4/15/93 clk's order the due date for the reply brief was changed to 4/29/93. Provided the brief was served by the date, the reply brief shall be filed upon receipt. It appearing that briefing is complete, this appeal is deemed ready for calendaring. [2337931-1] in 93-50031, 93-50057 (Motion recvd 4/19/93) [93-50031, 93-50057] (tsp) [93-50031 93-50057]
- 4/26/93 19 Filed record on appeal in 13 Vols. (total): 4 Clerks Rec 9 RTs (orig) [93-50031, 93-50057] [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/27/93 20 Calendar check performed [93-50031, 93-50057] (aw) [93-50031 93-50057]
- 4/30/93 21 Calendar materials being prepared. [93-50031, 93-50057] [93-50031, 93-50057] (aw) [93-50031 93-50057]
- 5/5/93 22 CALENDARED: Pasadena 1:30 p.m. 7/12/93 Courtroom 1 [93-50031, 93-50057] (th) [93-50031 93-50057]

- 5/28/93 24 Filed Christopher Lee Armstrong Notice to join in oral argument at July 12, 1993 hearing by co-cnsl Barbara O'Conner. Cnsl David R. Reed will not be present at the oral argument ... (Panel) [93-50057, 93-50031] [2361602] note: no proof of service (ec) [93-50031 93-50057]
- 7/12/93 26 ARGUED AND SUBMITTED TO Harlington Wood, Stephen R. REINHARDT, Pamela A. RYMER [93-50031 93-50057] (jhc) [93-50031 93-50057]
- 8/9/93 28 Received CJA voucher (Voucher #0610261 \$1726.50) from counsel (Joseph Walsh) for approval of claim. Sent deficiency letter, due 8/31 (crw) [93-50031] (mlm) [93-50031]
- 8/19/93 29 Received CJA voucher (Voucher #0606608 \$1692.86) from counsel (Lannen) for approval of claim. [93-50031] (ah) [93-50031]
- 8/25/93 30 Filed certificate of record on appeal RT filed in DC 4/8/93 [93-50031] (dr) [93-50031]
- 8/25/93 31 Filed certificate of record on appeal RT filed in DC 4/8/93 [93-50057] (dr) [93-50057]
- 9/14/93 33 CJA voucher (Voucher #0606608 \$1767.36c (atty T. Lannen) forwarded to panel judge SR for approval. [93-50031] (crw) [93-50031]
- 9/14/93 34 CJA voucher (Voucher #0610261 \$1762.50 (atty J. Walsh) forwarded to panel judge SR for approval. [93-50031] (crw) [93-50031]

- 9/27/93 36 CJA voucher (Voucher #0610261 \$1762.50) received from panel judge SR, approved. Sent to Administrative Judge DWN for approval of excess. (crw) [93-50031]
- 9/27/93 37 CJA voucher (Voucher #0606608 \$1767.36) received from panel judge SR, approved. Sent to Administrative Judge DWN for approval of excess. (crw) [93-50031]
- 10/5/93 38 Received CJA voucher (Voucher #0610261 \$1762.50) from Administrative Judge approving excess claim. (crw) [93-50031]
- 10/5/93 39 Received CJA voucher (Voucher #0606608 \$1767.36) from Administrative Judge approving excess claim. (crw) [93-50031]
- 10/27/93 40 Processed CJA voucher (Voucher #0610261 \$1762.50) for counsel (Joseph Francis Walsh in 93-50031) [93-50031] (crw) [93-50031]
- 10/29/93 41 Processed CJA voucher (Voucher #0606608 \$1767.36) for counsel (Timothy C. Lannen in 93-50031) [93-50031] (crw) [93-50031]
- 1/21/94 45 FILED OPINION: REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Harlington Wood, author; Stephen R. REINHARDT, dissenting; Pamela A. RYMER.) FILED AND ENTERED JUDGEMENT. [93-50031, 93-50057] (ck) [93-50031 93-50057]

- 2/8/94 46 [2512726] Filed original and 40 copies Appellee Shelton Auntwan Martin petition for rehearing with suggestion for rehearing en banc 12 p. pages, served on 2/4/94 (panel; active judges) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 2/8/94 48 [2513347] Filed original and 3 copies (made addl copies for court) Appellees Aaron Hampton, and Robert Rozelle in 93-50031 Joinder in petition for rehearing with suggestion for rehearing en banc filed by Shelton Auntwan Martin (1) page p. pages, served on 2/4/94 (panel; active judges) [93-50031] (ec) [93-50031]
- 2/10/94 50 Filed Aple Armstrong mtn to join in petition for rehearing of Robert Rozelle; served on 2/4/94 (Panel) [2516064-1] (gva) [93-50031 93-50057]
- 3/7/94 51 Received from Barbara O'Connor, Supr. Trial Atty., FPD, letter dated Mar 3, 1994 with a copy of USA v. Clary Finding and Conclusions of Law as suppl authority in support of petition for rehearing en banc (one copy only) note: notified cnsl to submit 39 addl copies (by fax) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 3/9/94 52 Received from Barbara E. O'Connor, Supvr. Trial Atty., letter dated Mar 67, 1993, w/39 addl copies of suppl. authority in support of Petition for Rehearing, with Suggestion for Rehearing en banc filed on half of defendant Martin (panel; active judges) citations, served on 3/3/94 [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 4/20/94 55 Filed order (Harlington Wood, Stephen R. REINHARDT, Pamela A. RYMER,): The opinion and dissent filed Jan 21, 1994, slip. op. 599 and appearing at 14 F.3d 1387 (9th Cir. 1944) are withdrawn. A new opinion and dissent are filed in their place, and the petitions for rehearing and suggestion for rehearing en banc are dismissed as moot and without prejudice. [2512726-1] in 93-50031, 93-50057 [2513347-1] [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/20/94 56 FILED OPINION; REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Harlington Wood, author; Stephen R. REINHARDT, dissenting; Pamela A. RYMER.) FILED AND ENTERED JUDGMENT. [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/5/94 58 Filed order (Harlington Wood, Stephen R. REINHARDT, Pamela A. RYMER,): the issuance of the mandate shall be stayed pending further notice from the panel. [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/6/94 60 [2566004] Filed original and 40 copies Appellee Shelton Auntwan Martin in 93-50031 petition for rehearing with suggestion for rehearing en banc 14 p. pages, served on 5/4/94 (panel; active judges) [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 5/9/94 62 Filed Joinder of Appellees Robert Rozelle and Aaron Hampton in the petition for rehearing and suggestion for rehearing en banc filed by appellee Shelton Auntwan Martin (panel; active judges) [93-50031] (ec) [93-50031]
- 5/25/94 65 Filed order (Harlington WOOD, Jr., Stephen R. REINHARDT, Pamela A. RYMER,): the appt shall file a response to the petition for rehearing and suggestion for rehearing en banc not exceeding 15 pages in length setting forth its position on whether this case should be heard en banc. Forty copies of each brief shall be filed within 21 days from the date of this order. [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 6/17/94 66 Filed Appellant's USA response to petition for en banc rehearing [2566004-1] in 93-50031, 93-50057 served on 6/15/94 (panel; active judges) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/1/94 73 Filed order FOR PUBLICATION (J.C. WALLACE) upon the vote of a majority of nonrecused regular active judges of this ct, it is ordered that this case be reheard by the en banc court pursuant to Cir. Rule 35-3. [93-50031, 93-50057] (rc) [93-50031 93-50057]
- 8/3/94 70 CALENDARED: PASADENA Sept 22 1994 1:30 pm Courtroom 3 [93-50031, 93-50057] (aw) [93-50031 93-50057]

- 8/3/94 74 Filed order (J. C. WALLACE) oral argument in the above case shall be reheard en banc in Pasadena on Sept. 22, 1994, at 1:30 pm. The parties shall forward twenty (20) copies of their original briefs and excerpts of record on or before 8/17/94. (PHONED OUT: 4:00 pm) [93-50031, 93-50057] (rc) [93-50031 93-50057]
- 8/10/94 76 Filed order (J. C. WALLACE,): Within 21 days from the date of this order, the parties shall file simultaneous en banc briefs not to exceed fifteen pages. [93-50031, 93-50057] note: send briefs to panel by Fed. Express or overnight mail. (ec) [93-50031 93-50057]
- 8/12/94 79 Received orig. 20 copies Appellees Aaron Hampton, Robert Rozelle in 93-50031's brief of 14 pages; served on 3/31/93 (prev. filed April 2, 1993) note: submitted pursuant to court's order of Aug 3, 1993. -en banc panel- [93-50031] (ec) [93-50031]
- 8/15/94 80 Received 20 addl copies Appellant USA opening brief, 37 pages and Excerpts of Record (originally filed Mar 3, 1993), Served on 3/1/93 (en banc panel) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/15/94 81 Received 20 addl copies USA reply brief, 12 pages (originally filed April 19, 1993) -en banc panel- [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 8/15/94 82 Received 20 addl copies appellee Shelton Auntwan Martin's brief of 25 pages (orig. filed April 2, 1993) -en banc panel- [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/15/94 83 [2626953] Received 20 addl copies Appellee Shelton Auntwan Martin petition for rehearing with suggestion for rehearing en banc (originally filed May 6, 1994) -en banc panel-, (ec) [93-50031 93-50057]
- 8/15/94 84 Received 20 addl copies Appellant USA response to petition for rehearing and suggestion for rehearing en banc, (originally filed June 17, 1994) served on 6/15/94. -en banc panel- [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/18/94 85 Received 20 addl copies Appellee's Shelton Auntwan Martin supplemental excerpts of record on appeal in 1 vol. (originally filed 4/2/93) -en banc panel- (ec) [93-50031 93-50057]
- 8/18/94 86 Received ltr dated 8/15/94 from Aple Armstrong re: I hereby transmit this complaint and request that you appoint an indepenent csl, pursuant to 28 U.S.C. 591, to investigate the misconduct of U.S. Atty Terree Bowers.... (See ltr for complete text) (En Banc Panel) [93-50057, 93-50031] (gva) [93-50031 93-50057]
- 9/2/94 87 Filed original and 20 copies Appellees Aaron Hampton and Robert Rozelle en banc supplemental brief of 15 pages, served on 8/31/94 (en banc panel) [93-50031] (ec) [93-50031]

- 9/2/94 88 Filed original and 20 copies Appellee Shelton Auntwan Martin en banc supplemental brief of 15 pages, served on 8/31/94 (en banc panel) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 9/6/94 89 Filed original and 20 copies Appellant USA en banc supplemental brief of 15 pages (EN BANC COURT via overnight mail); served on 8/31/94 [93-50031, 93-50057] (sa) [93-50031 93-50057]
- 9/12/94 90 Filed notice of change of counsel for appellee Freddie Mack; joinder in brief of appellee Martin. (en banc panel) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 9/12/94 92 Filed request (faxed copy) of Courtroom TV Network to operate video equipment and clerk order: (Clerk: cac) A majority of the panel of judges hearing the case disapproves coverage. Courtroom TV Network's request for coverage is denied. [2642280-1] in 93-50031, 93-50057 (Motion recvd 8/26/94) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 9/22/94 94 ARGUED AND SUBMITTED TO (EN-BANC HEARING) WALLACE, BROWNING, SCHROEDER, FLETCHER, DW NELSON, CANBY, REINHARDT, LEAVY, RYMER, TG NELSON, KLEINFELD. [93-50031, 93-50057] (lu) [93-50031 93-50057]
- 9/22/94 95 Received USA in 93-50031, USA in 93-50057 additional citations, served on 9/22/94. (served panel) [93-50031, 93-50057] (lu) [93-50031 93-50057]

- 1/18/95 97 Rec'd supp'l CJA voucher (#0610261-2 for \$3000.00) from counsel (Walsh) for approval of claim. [93-50031] (jr) [93-50031]
- 2/3/95 98 Supp'l CJA voucher (#0610261-2 for \$3000.00) forwarded to Commissioner (PLS) for approval. [93-50031] (jr) [93-50031]
- 2/3/95 99 Received supplemental CJA voucher (Voucher #0610261-3 \$1852.50) from counsel for approval of claim. [93-50031] (Voucher #0606608-2, for atty. Lannen for aple Hampton) -mlm- (ah) [93-50031]
- 2/7/95 100 Supp'l CJA voucher (#0610261-2 for \$3000.00) rec'd from Commissioner (PLS), approved. Sent to Administrative Judge (SR) for approval of excess. (jr) [93-50031]
- 2/16/95 101 Rec'd supp'l CJA voucher (#0610261-2 for \$3000.00) from Administrative Judge approving excess claim. (jr) [93-50031]
- 2/24/95 103 Supplemental CJA voucher (Voucher #0606608-2 \$1852.50 Atty Lannen for aple Hampton) forwarded to panel judge PS for approval. [93-50031] (mlm) [93-50031]
- 2/24/95 104 Processed CJA voucher (Voucher #0610261-2 \$3000) for counsel (Joseph Francis Walsh in 93-50031) [93-50031] (mlm) [93-50031]
- 2/28/95 109 Suppl. CJA voucher (Voucher #0606608-2 \$1852.50) rec'd from Commissioner PS, approved. Sent to Administrative Judge SR for approval of excess. (mlm) [93-50031]

- 3/2/95 106 FIELD OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Heard en banc; J. C. WALLACE, concurring; James R. BROWNING; Mary M. Schroeder; Betty B. FLETCHER; Dorothy W. NELSON; William C. CANBY; Stephen R. REINHARDT; Edward LEAVY, dissenting; Pamela A. RYMER, dissenting; Thomas G. NELSON, dissenting; Andrew J. KLEINFELD, dissenting.) FILED AND ENTERED JUDGMENT. [93-50031, 93-50057] (sa) [93-50031 93-50057]
- 3/14/95 108 Received supplemental CJA voucher (Voucher #0606608-2 \$1852.50) from Administrative Judge approving excess claim. (mlm) [93-50031]
- 3/16/95 110 Processed CJA voucher (Voucher #0606608-2 \$1852.50) for counsel (Timothy C. Lannen in 93-50031) [93-50031] (mlm) [93-50031]
- 3/20/95 111 Filed Appellant USA motion to stay the mandate pending application for writ of cert.... (SR via fax) [93-50031, 93-50057] served on 3/17/95 [2755516] [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 3/21/95 112 Filed Appellee Shelton Auntwan Martin Notice of decision not to file written opposition to aplt's motion for stay of mandate. in 93-50031, 93-50057 served on 3/20/95 (SR via fax) [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 3/24/95 114 Filed order (Stephen R. REINHARDT,): Appellant's motion to stay the mandate for 30 days from the date it would otherwise issue is granted. [2755516-1] in 93-50031, [93-50031, 93-50057] (wp) [93-50031 93-50057]
- 4/21/95 115 Filed Appellant USA motion for further stay of the mandate.... (SR) [93-50031] served on 4/21/95 [2776494] [93-50031] (ec) [93-50031]
- 4/28/95 116 Filed order (Stephen R. REINHARDT,): the plaintiff-appellant's request to stay the mandate until May 31, 1995 is granted. [2776494-1] in 93-50031 [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/25/95 117 Rec'd letter dated 5/19/95 from Supreme Court re: order filed today granting ext of time to and including 6/30/95 in which to file cert. petition. [93-50031, 93-50057] (jr) [93-50031 93-50057]
- 5/26/95 118 Filed Appellant USA motion for further stay the mandate pending application for writ of cert... (SR via Fed. Ex) [93-50031, 93-50057] served on 5/25/95 [2797529] [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/30/95 119 Filed order (Stephen R. REINHARDT) the pltf-aplt's request to stay the mandate untii 6/30/95 is GRANTED. [2797529-1] (PHONED OUT: 3:15 pm) [93-50031 93-50057] (rc) [93-50031 93-50057]

- 5/31/95 120 Filed aple Christopher Lee Armstrong motion to expedite issuance of the mandate with attached memo of pts & auth, construed as motion for reconsideration (REINHARDT) [93-50031, 93-50057] served on 5/25/95 [2799904] (sa) [93-50031 93-50057]
- 6/6/95 121 Filed order (Stephen R. REINHARDT,) Appellee Armstrong's motion to expedite issuance of the mandate is denied. [93-50031, 93-50057] (hh) [93-50031 93-50057]
- 6/23/95 122 Recvd courtesy copy of US application to S.Ct. for extension of time to 7/28/95 to file petition for cert. [casefile] [93-50031, 93-50057] (mlm) [93-50031 93-50057]
- 6/27/95 123 Filed aplt's mtn for further stay of the mandate pending application for a petition for a writ of certiorari; declaration of Mariam A. Krinsky. (FAXED TO: SR) served on 6/26/95 [2816199] [93-50031, 93-50057] (rc) [93-50031 93-50057]
- 6/30/95 124 Received S.Ct. letter dated 6/21/95 re: granted extension of time to file petition for cert. until 7/28/95. [93-50031, 93-50057] (mlm) [93-50031 93-50057]
- 7/3/95 125 Filed order (Stephen R. REINHARDT): Plaintiff-appellant's motion to stay the mandate until 8/7/95 pending the filing of a petition for writ of cert is hereby granted. In the event that the petition for cert is timely filed, the stay shall continue until final disp'n by the Sup. Ct. [93-50031, 93-50057] (sa) [93-50031 93-50057]

- 8/17/95 129 Copy of letter received from Barbara E. O'Connor, DFPD dtd 8/15/95, addressed to William K. Sutter, Clk, Spremet Ct of The United States re: on behalf of respondents Robert Rozelle, Aaron Hampton and Shelton Auntwan Martin, I wish to request a 30 day ext of time within which to file a brief in opposition to the petition for a writ of certiorari filed by the Solicitor General. Csl for all three of these respondents will be filing a separate briefs in opposition to petition.... (For Complete Text See Ltr) (CASEFILE) [93-50031] (rc) [93-50031]
- 9/25/95 130 Rec'd supp'l CJA voucher (#0610261-2 for \$2700.00) from counsel (Walsh) for approval of claim. [93-50031] (jr) [93-50031]
- 10/3/95 131 Supplemental CJA voucher (Voucher #0610261-3 \$2700) forwarded to commissioner for approval. [93-50031] (crw) [93-50031]
- 10/5/95 132 Suppl. CJA voucher (Voucher #0610261-3 \$2700) rec'd from commissioner, approved. Sent to Administrative Judge SR for approval of excess. (crw) [93-50031]
- 10/23/95 133 Rec'd supp'l CJA voucher (#0606608-3 for \$2422.50) from counsel (Lannen) for approval of claim. [93-50031] (jr) [93-50031]
- 10/25/95 134 Received supplemental CJA voucher (Voucher #0610261-3 \$2700) from Administrative Judge approving excess claim. (crw) [93-50031]

- 10/25/95 135 Supplemental CJA voucher (Voucher #0606608-3 \$2422.50) forwarded to commissioner for approval. [93-50031] (crw) [93-50031]
- 10/30/95 136 Processed CJA voucher (Voucher #0610261-3 \$2700.) for counsel (Joseph Francis Walsh in 93-50031) [93-50031] (ah) [93-50031]
- 11/2/95 142 Received letter from the Supreme Court dated 10/30/95 re: cert granted. [93-50031, 93-50057] (ah) [93-50031 93-50057]
- 11/9/95 139 Rcvd copy of respondents opposition to cert petition. [93-50031, 93-50057] (crw) [93-50031 93-50057]
- 11/9/95 140 Rcvd copy of ptnr USA's cert petition [93-50031, 93-50057] (crw) [93-50031 93-50057]
- 11/13/95 141 Suppl. CJA voucher (Voucher #0606608-3 \$2422.50) rec'd from commissioner, approved. Sent to Administrative Judge SR for approval of excess. (crw) [93-50031]

GENERAL DOCKET FOR
NINTH CIRCUIT COURT OF APPEALS

Court of Appeals Docket
No. 93-50057

USA

v.

ARMSTRONG

APPEAL FROM: CENTRAL DISTRICT OF CALIFORNIA,
LOS ANGELES

Filed: 2/8/93
Nsuit: 0

- 2/8/93 1 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Filed in D.C. on 1/19/93; setting schedule as follows: transcript shall be ordered by 2/11/93 for USA; transcript shall be filed by 3/15/93; appellants' briefs, excerpts due by 4/22/93 for USA; appellees' brief due 5/24/93 for Christopher Lee Armstrong; appellants' reply brief due by 6/7/93 for USA. (RT required: y) (Sentence imp) [93-50057] (rmw) [93-50057]
- 2/16/93 2 Filed order (Deputy Clerk: mg) the court is in receipt of the 4 Govt's motions to consolidate 93-50031 and 93-50057 and to expedite the appeals. The motions are granted. Appeals 93-50031 and 93-50057 are consolidated. The expedited briefing schedule is as follows: opening brief due Mar 1, 1993; aple's brief due Mar 31, 1993. Optional reply brief due 14 days from service ans brief. Court records do not currently reflect that DC has issued the COR. Aplt shall monitor the issuance of the certificate . . . These appeals shall be placed on the next available calendar after the filing of the ans brief. (Motion recvd 2/9/93) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 3/3/93 3 Filed original and 15 copies Appellant USA in 93-50031, Appellant USA in 93-50057 opening brief (Informal: n) 37 pages and five excerpts of record in 1 volume; served on 3/1/93 [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 3/29/93 4 14 day oral extension by phone of time to file appellee's brief denied — case expedited. [93-50031, 93-50057] (ra) [93-50031 93-50057]
- 4/2/93 5 Filed original and 15 copies Appellee Shelton Auntwan Martin in 93-50031 brief, 25 pages, 5 suppl. Exc.: served on 3/31/93 minor defcy: no Statement of Rel. Cases Notified counsel. [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/5/93 6 Filed motion of defendant Freddie Mack for joinder in co-defendant Shelton Cuntuan Martin's ans brief and deputy clerk order: (Deputy Clerk: cg) granting motion & order [2327428-1] in 93-50031, 93-50057 (Motion recvd 3/31/93) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/8/93 7 Filed original and 15 copies appellees Aaron Hampton, Robert Rozelle 14 pages brief, ; served on 3/31/93 [93-50031] (ec) [93-50031]
- 4/12/93 9 Received Appellee Shelton Auntwan Martin in 93-50031 satisfaction of (minor) brief deficiency. (stmt. of related cases) [93-50031, 93-50057] (jlc) [93-50031 93-50057]
- 4/15/93 8 Filed motion and order: (Deputy Clerk: cag) granting motion of Christopher Lee Armstrong's to join in the ans brief of Co-Def Shelton C. Martin is granted. The optional reply brief shall be due 14 days from the date of this order. in 93-50057 (motion recvd 4/12/93) [93-50031, 93-50057] (tsp) [93-50031 93-50057]

- 4/19/93 10 Filed original and 15 copies USA in 93-50031, USA in 93-50057 reply brief, (Informal: n) 12 pages; served on 4/15/93 [93-50031, 93-50057] (ft) [93-50031 93-50057]
- 4/21/93 11 Filed: (Deputy Clerk: cag) denying motion & order to file late brief. By way of the 4/15/93 clk's order the due date for the reply brief was changed to 4/29/93. Provided the brief was served by the date, the reply brief shall be filed upon receipt. It appearing that briefing is complete, this appeal is deemed ready for calendaring. [2337931-1] in 93-50031, 93-50057 (Motion recvd 4/19/93) [93-50031, 93-50057] (tsp) [93-50031 93-50057]
- 4/26/93 13 Filed record on appeal in 13 Vols. (total): 4 Clerks Rec 9 RTs (orig) [93-50031, 93-50057] [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/27/93 14 Calendar check performed [93-50031, 93-50057] (aw) [93-50031 93-50057]
- 4/30/93 15 Calendar materials being prepared. [93-50031, 93-50057] [93-50031, 93-50057] (aw) [93-50031 93-50057]
- 5/5/93 16 CALENDARED: Pasadena 1:30 pm 7/12/93 Courtroom 1 [93-50031, 93-50057] (th) [93-50031 93-50057]
- 5/28/93 17 Filed Christopher Lee Armstrong Notice to join in oral argument at July 12, 1993 hearing by co-cnsl Barbara O'Conner. Cnsl David R. Reed will not be present at the oral argument . . . (Panel) [93-50057, 93-50031] [2361602] note: no proof of service (ec) [93-50031 93-50057]

- 7/12/93 18 ARGUED AND SUBMITTED TO Harlington Wood, Stephen R. REINHARDT, Pamela A. RYMER [93-50031, 93-50057] (jhc) [93-50031 93-50057]
- 8/25/93 20 Filed certificate of record on appeal RT filed in DC 4/8/93 [93-50031] (dr) [93-50031]
- 8/25/93 21 Filed certificate of record on appeal RT filed in DC 4/8/93 [93-50057] (dr) [93-50057]
- 1/21/94 23 FILED OPINION: REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Harlington Wood, author; Stephen R. REINHARDT, dissenting; Pamela A. RYMER.) FILED AND ENTERED JUDGMENT. [93-50031, 93-50057] (ck) [93-50031 93-50057]
- 2/8/94 24 [2512726] Filed original and 40 copies Appellee Shelton Auntwan Martin petition for rehearing with suggestion for rehearing en banc 12 p. pages, served on 2/4/94 (panel; active judges) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 2/10/94 25 Filed Aple Armstrong mtn to join in petition for rehearing of Robert Rozelle; served on 2/4/94 (Panel) [2516064-1] (gva) [93-50031 93-50057]

- 3/7/94 27 Received from Barbara O'Connor, Supr. Trial Atty., FPD, letter dated Mar 3, 1994 with a copy of USA v. Clary Finding and Conclusions of Law as suppl authority in support of petition for rehearing en banc (one copy only) note: notified cnsl to submit 39 addl copies (by fax) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 3/9/94 28 Received from Barbara E. O'Connor, Supvr. Trial Atty., letter dated Mar 67, 1994, w/39 addl copies of suppl. authority in support of Petition for Rehearing, with Suggestion for Rehearing en banc filed on behalf of defendant Martin (panel; active judges) citations, served on 3/3/94 [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 4/20/94 29 Filed order (Harlington Wood, Stephen R. REINHARDT, Pamela A. RYMER,): The opinion and dissent filed Jan 21, 1994, slip. op. 599 and appearing at 14 F.3d 1387 (9th Cir. 1944) are withdrawn. A new opinion and dissent are filed in their place, and the petitions for rehearing and suggestion for rehearing en banc are dismissed as moot and without prejudice. [2512726-1] in 93-50031, 93-50057 [2513347-1] [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 4/20/94 30 FILED OPINION: REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Harlington Wood, author; Stephen R. REINHARDT, dissenting; Pamela A. RYMER.) FILED AND ENTERED JUDGMENT. [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/5/94 31 Filed order (Harlington Wood, Stephen R. REINHARDT, Pamela A. RYMER.): the issuance of the mandate shall be stayed pending further notice from the panel. [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/6/94 32 [2566004] Filed original and 40 copies Appellee Shelton Auntwan Martin in 93-50031 petition for rehearing with suggestion for rehearing en banc 14 p. pages, served on 5/4/94 (panel; active judges) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/25/94 33 Filed order (Harlington WOOD, Jr., Stephen R. REINHARDT, Pamela R. RYMER.): the appt shall file a response to the petition for rehearing and suggestion for rehearing en banc not exceeding 15 pages in length setting forth its position on whether this case should be heard en banc. Forty copies of each brief shall be filed within 21 days from the date of this order. [93-50031, 93-50057] (ec) [93-50031 93-50057]

- 6/17/94 34 Filed Appellant's USA response to petition for en banc rehearing [2566004-1] in 93-50031, 93-50057 served on 6/15/94 (panel; active judges) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/1/94 37 Filed order FOR PUBLICATION (J. C. WALLACE) upon the vote of a majority of nonrecused regular active judges of this ct, it is ordered that this case be reheard by the en banc court pursuant to Cir. Rule 35-3. [93-50031, 93-50057] (rc) [93-50031 93-50057]
- 8/3/94 38 Filed order (J.C. WALLACE) oral argument in the above case shall be reheard en banc in Pasadena on Sept. 22, 1994, at 1: 30 pm. The parties shall forward twenty (20) copies of their original briefs and excerpts of record on or before 8/17/94. (PHONED OUT: 4:00 pm.) [93-50031, 93-50057] (rc) [93-50031 93-50057]
- 8/10/94 40 Filed order (J. C. WALLACE.): Within 21 days from the date of this order, the parties shall file simultaneous en banc briefs not to exceed fifteen pages. [93-50031, 93-50057] note: send briefs to panel by Fed. Express or overnight mail. (ec) [93-50031 93-50057]
- 8/12/94 41 Received orig. 20 copies Appellees Aaron Hampton, Robert Rozelle in 93-50031's brief of 14 pages; served on 3/31/93 (prev. filed April 2, 1993) note: submitted pursuant to court's order of Aug 3, 1994. -en banc panel- [93-50031] (ec) [93-50031]

- 8/15/94 42 Received 20 addl copies Appellant USA opening brief, 37 pages and Excerpts of Record (originally filed Mar 3, 1993), Served on 3/1/93 (en banc panel) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/15/94 43 Received 20 addl copies USA reply brief, 12 pages (originally filed April 19, 1993) -en banc panel- [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/15/94 44 Received 20 addl copies appellee Shelton Auntwan Martin's brief of 25 pages (orig. filed April 2, 1993) -en banc panel- [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/15/94 45 [2626953] Received 20 addl copies Appellee Shelton Auntwan Martin petition for rehearing with suggestion for rehearing en banc (originally filed May 6, 1994 -en banc panel-, (ec) [93-50031 93-50057]
- 8/15/94 46 Received 20 addl copies Appellant USA response to petition for rehearing and suggestion for rehearing en banc, (originally filed June 17, 1994) served on 6/15/94. -en banc panel- [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 8/18/94 47 Received 20 addl copies Appellee's Shelton Auntwan Martin supplemental excerpts of record on appeal in 1 vol. (originally filed 4/2/93) -en banc panel- (ec) [93-50031 93-50057]

- 8/18/94 48 Received ltr dated 8/15/94 from Aple Armstrong re: I hereby transmit this complaint and request that you appoint an independent csl, pursuant to 28 U.S.C. 591, to investigate the misconduct of U.S. Atty Terree Bowers. . . . (See ltr for complete text) (En Banc Panel) [93-50057, 93-50031] (gva) [93-50031 93-50057]
- 9/2/94 49 Filed original and 20 copies Appellees Aaron Hampton and Robert Rozelle en banc supplemental brief of 15 pages, served on 8/31/94 (en banc panel) [93-50031] (ec) [93-50031]
- 9/2/94 50 Filed original and 20 copies Appellee Shelton Auntwan Martin en banc supplemental brief of 15 pages, served on 8/31/94 (en banc panel) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 9/6/94 51 Filed original and 20 copies Appellant USA en banc supplemental brief of 15 pages (EN BANC COURT via overnight mail); served on 8/31/94 [93-50031, 93-50057] (sa) [93-50031 93-50057]
- 9/12/94 52 Filed notice of change of counsel for appellee Freddie Mack; joinder in brief of appellee Martin. (en banc panel) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 9/12/94 53 Filed joinder of appellee Armstrong in appellee Martin's en banc brief, served 9/9/94 (en banc panel) [93-50057] (ec) [93-50057]

- 9/12/94 54 Filed request (faxed copy) of Courtroom TV Network to operate video equipment and clerk order: (Clerk: cac) A majority of the panel of judges hearing the case disapproves coverage. Courtroom TV Network's request for coverage is denied. [2642280-1] in 93-50031, 93-50057 (Motion recvd 8/26/94) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 9/22/94 55 ARGUED AND SUBMITTED TO (EN-BANC HEARING) WALLACE, BROWNING, SCHROEDER, FLETCHER, DW NELSON, CANBY, REINHARDT, LEAVY, RYMER, TG NELSON, KLEINFELD. [93-50031, 93-50057] (lu) [93-50031 93-50057]
- 9/22/94 56 Received USA in 93-50031, USA in 93-50057 additional citations, served on 9/22/94. (served panel) [93-50031, 93-50057] (lu) [93-50031 93-50057]
- 3/2/95 58 FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Heard en banc; J. C. WALLACE, concurring; James R. BROWNING; Mary M. SCHROEDER; Betty B. FLETCHER; Dorothy W. NELSON; William C. CANBY; Stephen R. REINHARDT; Edward LEAVY, dissenting; Pamela A. RYMER, dissenting; Thomas G. NELSON, dissenting; Andrew J. KLEINFELD, dissenting.) FILED AND ENTERED JUDGMENT. [9E-50031, 93-50057] (sa) [93-50031 93-50057]

- 3/20/95 60 Filed Appellant USA motion to stay the mandate pending application for writ of cert. . . . (SR via fax) [93-50031, 93-50057] served on 3/17/95 [2755516] [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 3/21/95 61 Filed Appellee Shelton Auntwan Martin Notice of decision not to file written opposition to aplt's motion for stay of mandate. in 93-50031, 93-50057 served on 3/20/95 (SR via fax) [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 3/24/95 62 Filed order (Stephen R. REINHARDT,): Appellant's motion to stay the mandate for 30 days from the date it would otherwise issue is granted. [2755516-1] in 93-50031, [93-50031, 93-50057] (wp) [93-50031 93-50057]
- 4/21/95 63 Filed Appellant USA motion for further stay of the mandate. . . . (SR) [93-50031] served on 4/21/95 [2776494] [93-50031] (ec) [93-50031]
- 4/28/95 64 Filed order (Stephen R. REINHARDT,): the plaintiff-appellant's request to stay the mandate until May 31, 1995 is granted. [2776494-1] in 93-50031 [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/25/95 65 Rec'd letter dated 5/19/95 from Supreme Court re: order filed today granting ext of time to and including 6/30/95 in which to file cert. petition. [93-50031, 93-50057] (jr) [93-50031 93-50057]

- 5/26/95 66 Filed Appellant USA motion for further stay the mandate pending application for writ of cert . . . (SR via Fed. Ex) [93-50031, 93-50057] served on 5/25/95 [2797529] [93-50031, 93-50057] (ec) [93-50031 93-50057]
- 5/30/95 68 Filed order (Stephen R. REINHARDT) the pltf-aplt's request to stay the mandate until 6/30/95 is GRANTED. [2797529-1] (PHONED OUT: 3:15 pm) [93-50031, 93-50057] (rc) [93-50031 93-50057]
- 5/31/95 69 Filed aple Christopher Lee Armstrong motion to expedite issuance of the mandate with attached memo of pts & auth, construed as motion for reconsideration (REINHARDT) [93-50031, 93-50057] served on 5/25/95 [2799904] (sa) [93-50031 93-50057]
- 6/6/95 70 Filed order (Stephen R. REINHARDT,) Appellee Armstrong's motion to expedite issuance of the mandate is denied. [93-50031, 93-50057] (hh) [93-50031 93-50057]
- 6/23/95 71 Recvd courtesy copy of US application to S.Ct. for extension of time to 7/28/95 to file petition for cert. [casefile] [93-50031, 93-50057] (mlm) [93-50031 93-50057]
- 6/27/95 72 Filed aplt's mtn for further stay of the mandate pending application for a petition for a writ of certiorari; declaration of Miriam A. Krinsky. (FAXED TO: SR) served on 6/26/95 [2816199] [93-50031, 93-50057] (rc) [93-50031 93-50057]

- 6/30/95 73 Received S.Ct. letter dated 6/21/95 re: granted extension of time to file petition for cert. until 7/28/95. [93-50031, 93-50057] (mlm) [93-50031 93-50057]
- 7/3/95 74 Filed order (Stephen R. REINHARDT): Plaintiff-appellant's motion to stay the mandate until 8/7/95 pending the filing of a petition for writ of cert is hereby granted. In the event that the petition for cert is timely filed, the stay shall continue until final disp'n by the Sup. Ct. [93-50031, 93-50057] (sa) [93-50031 93-50057]
- 11/2/95 77 Received letter from the Supreme Court dated 10/30/95 re: cert granted. [93-50031, 93-50057] (ah) [93-50031 93-50057]
- 11/9/95 75 Rcvd copy of respondents opposition to cert petition. [93-50031, 93-50057] (crw) [93-50031 93-50057]
- 11/9/95 76 Rcvd copy of ptnr USA's cert petition [93-50031, 93-50057] (crw) [93-50031 93-50057]

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
FEBRUARY 1992 GRAND JURY

No. CR92-336

UNITED STATES OF AMERICA, *Plaintiff,*

v.

CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE,
AARON HAMPTON, FREDDIE MACK, SHELTON AUNTWAN
MARTIN, AKA "PSYCHO," *Defendants.*

INDICTMENT

[21 U.S.C. § 846: Conspiracy; 21 U.S.C. § 841(a)(1):
Possession with Intent to Distribute and Distribution of
Cocaine Base; 18 U.S.C. § 924(c): Using and Carrying a
Firearm During a Drug Trafficking Crime]

The Grand Jury charges:

COUNT ONE
[21 U.S.C. § 846]

I. *OBJECTS OF THE CONSPIRACY*

Beginning on a date unknown to the Grand Jury and continuing to on or about April 8, 1992, in Los Angeles County, within the Central District of California, defendants CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE, AARON HAMPTON, FREDDIE MACK, and SHELTON AUNTWAN MARTIN, aka "Psycho," and

others known and unknown to the Grand Jury, knowingly and willfully conspired and agreed with each other to commit the following offenses against the United States, in violation of title 21, United States Code, Section 846:

1. To knowingly and intentionally possess with intent to distribute an amount in excess of 50 grams of cocaine base, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1); and

2. To knowingly and intentionally distribute an amount in excess of 50 grams of cocaine base, Schedule II narcotic drug controlled substance, in violation of title 21, United States Code, Section 841(a)(1).

II. *MEANS BY WHICH THE OBJECTS OF THE CONSPIRACY WERE TO BE ACCOMPLISHED*

The objects of the conspiracy were to be accomplished, in substance, as follows:

1. Defendants CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE, and SHELTON AUNTWAN MARTIN, aka "Psycho," and others known and unknown to the Grand Jury, would rent and occupy Room 203 of the La Mirage Motel, located in Los Angeles, California ("Room 203"), for the purpose of operating a "crack house," that is, a facility for the storage and sale of cocaine base.

2. In connection with the distribution of cocaine base from Room 203, defendant CHRISTOPHER LEE ARMSTRONG would negotiate the sale of cocaine base with prospective customers of the drugs and would direct the customers either to Room 203 or to an off-site location for the purpose of delivering the drugs and receiving payment.

3. Defendant CHRISTOPHER LEE ARMSTRONG would either sell cocaine base to the customers himself or

would provide the drugs to various co-conspirators who, in turn, would deliver the drugs to customers.

4. Defendant ROBERT ROZELLE would supply customers with cocaine base from Room 203.

5. Defendant CHRISTOPHER LEE ARMSTRONG periodically would resupply ROBERT ROZELLE at Room 203 with cocaine base.

6. Defendant SHELTON AUNTWAN MARTIN, aka "Psycho," would act as an armed guard at Room 203 during the sale of cocaine base and would assist with the distribution of the drugs.

7. Defendants AARON HAMPTON and FREDDIE MACK would deliver cocaine base to customers at off-site locations.

III. OVERT ACTS

In furtherance of the conspiracy and to accomplish the objects of the conspiracy, the defendants, and others known and unknown to the Grand Jury, committed various overt acts within the Central District of California, including but not limited to the following:

1. On or about February 13, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated by telephone with a confidential informant (CI) for the delivery, at a Burger King restaurant in Hawthorne, of 1/2 ounce of cocaine base.

2. On or about February 13, 1992, defendants AARON HAMPTON and FREDDIE MACK met with a CI at a Burger King restaurant in Hawthorne and delivered approximately 6.71 grams of cocaine base.

3. On or about March 11, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated by telephone with a CI for the delivery, in Room 203, of cocaine base.

4. On or about March 11, 1992, defendant ROBERT ROZELLE sold a CI approximately 1.86 grams of cocaine base in Room 203.

5. On or about March 11, 1992, defendant SHELTON AUNTWAN MARTIN, aka "Psycho," in the presence of defendant ROBERT ROZELLE, possessed a .357 magnum handgun in Room 203 and acted as a guard during a sale of cocaine base.

6. On or about March 13, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated by telephone with a CI for delivery, in Room 203, of cocaine base.

7. On or about March 13, 1992, defendants ROBERT ROZELLE and SHELTON AUNTWAN MARTIN, aka "Psycho," met with a CI in Room 203 and showed the CI a .357 handgun and a .38 caliber revolver.

8. On or about March 13, 1992, defendants CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE, and SHELTON AUNTWAN MARTIN, aka "Psycho," sold a CI approximately 1.85 grams of cocaine base in Room 203.

9. On or about March 16, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated by telephone with a CI for the delivery, in Room 203, of cocaine base.

10. On or about March 16, 1992, defendants CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE, and SHELTON AUNTWAN MARTIN, aka "Psycho," sold a CI approximately 28 grams of cocaine base in Room 203.

11. On or about March 23, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated by telephone with a CI for the sale of one pound of cocaine base for \$8,500.

12. On or about March 24, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated by telephone with a CI for the delivery, at a Boy's Market in Inglewood, of cocaine base.

13. On or about March 24, 1992, defendants CHRISTOPHER LEE ARMSTRONG, AARON HAMPTON and FREDDIE MACK delivered approximately 3.5 grams of cocaine base to a CI at a Boy's Market in Inglewood.

14. On or about March 27, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated by telephone with a

CI for the delivery, at a Taco Bell in Hawthorne, of one ounce of cocaine base.

15. On or about March 27, 1992, defendant AARON HAMPTON delivered approximately 27 grams of cocaine base to a CI at a Taco Bell in Hawthorne.

16. On or about April 6, 1992, defendant CHRISTOPHER LEE ARMSTRONG negotiated with a CI for the delivery, at a Builder's Emporium in Inglewood, of approximately two ounces of cocaine base.

17. On or about April 6, 1992, defendants CHRISTOPHER LEE ARMSTRONG and AARON HAMPTON delivered approximately 55.38 grams of cocaine base to a CI at a Builder's Emporium in Inglewood.

18. On or about April 8, 1992, defendants CHRISTOPHER LEE ARMSTRONG and AARON HAMPTON possessed, in Room 203, one Ruger 9 millimeter semi-automatic pistol and approximately 9.29 grams of cocaine base.

COUNT TWO

[21 U.S.C. § 841(a)(1)]

On or about February 13, 1992, defendants CHRISTOPHER LEE ARMSTRONG, AARON HAMPTON and FREDDIE MACK knowingly and intentionally distributed approximately 6.71 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II narcotic drug controlled substance.

COUNT THREE

[18 U.S.C. § 924(c)]

On or about March 11, 1992, defendants CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE, and SHELTON AUNTWAN MARTIN, aka "Psycho," knowingly used and carried a firearm during and in relation to a

drug trafficking crime, namely, distribution of 1.86 grams of cocaine base, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT FOUR

[18 U.S.C. § 924(c)]

On or about March 13, 1992, defendants CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE, and SHELTON AUNTWAN MARTIN, aka "Psycho," knowingly used and carried a firearm during and in relation to a drug trafficking crime, namely, distribution of 1.85 grams of cocaine base, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT FIVE

[21 U.S.C. § 841(a)(1)]

On or about March 16, 1992, defendants CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE, and SHELTON AUNTWAN MARTIN, aka "Psycho," knowingly and intentionally distributed approximately 28 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II narcotic drug controlled substance.

COUNT SIX

[21 U.S.C. § 841(a)(1)]

On or about March 27, 1992, defendants CHRISTOPHER LEE ARMSTRONG and AARON HAMPTON knowingly and intentionally distributed approximately 27 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II narcotic drug controlled substance.

COUNT SEVEN
[21 U.S.C. § 841(a)(1)]

On or about April 6, 1992, defendants CHRISTOPHER LEE ARMSTRONG and AARON HAMPTON knowingly and intentionally distributed approximately 55.38 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II narcotic drug controlled substance.

COUNT EIGHT
[21 U.S.C. § 841(a)(1)]

On or about April 8, 1992, defendants CHRISTOPHER LEE ARMSTRONG and AARON HAMPTON knowingly and intentionally possessed with intent to distribute approximately 9.29 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II narcotic drug controlled substance.

COUNT NINE
[18 U.S.C. § 924(c)]

On or about April 8, 1992, defendants CHRISTOPHER LEE ARMSTRONG and AARON HAMPTON knowingly used and carried a firearm during and in relation to a drug trafficking crime, namely, possession with intent to distribute cocaine base, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL

Foreperson

LOURDES G. BAIRD
United States Attorney

ROBERT L. BROSIO
Assistant United States Attorney
Chief, Criminal Division

DAVID C. SCHEPER
Assistant United States Attorney
Chief, Criminal Complaints

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR92-336-CBM

UNITED STATES OF AMERICA, *Plaintiff,*

v.

CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE,
AARON HAMPTON, FREDDIE MACK, SHELTON AUNTWAN
MARTIN, *Defendants.*

NOTICE OF MOTION; MOTION FOR DISCOVERY
AND/OR DISMISSAL OF INDICTMENT FOR
SELECTIVE PROSECUTION; MEMORANDUM OF
POINTS AND AUTHORITIES; DECLARATION

Hearing Date: 8-17-92
Hearing Time: 1:30 p.m.

TO: UNITED STATES ATTORNEY LOURDES G.
BAIRD AND ASSISTANT UNITED STATES AT-
TORNEY LAWRENCE H. CHO:

PLEASE TAKE NOTICE that on August 17, 1992 at
1:30 p.m., or as soon thereafter as counsel may be heard,
in the courtroom of the Honorable Consuelo B. Marshall,
United States District Judge, defendant, SHELTON MAR-
TIN, will bring on for hearing the following motion:

DECLARATION OF MARLA BELLER

I, Marla Beller, hereby state and declare as follows:

1. I am employed as a Paralegal Specialist by the
Federal Public Defender in the Central District of
California.

2. Paralegal Specialists Damone Schraier, James Sim-
mons, and myself have reviewed all cases closed by the
Office of the Federal Public defender during the year 1991,
which alleged violations of 21 U.S.C. § 846 and/or 21
U.S.C. § 841. Of those cases, I have prepared a list of all
those involving cocaine base, excluding only out-of-district
cases and those in which counsel was retained prior to
post-indictment arraignment (based on whether or not there
was a copy of the indictment in our file).

3. Attached hereto and incorporated by reference herein
is a copy of a chart evidencing the results of the study of
those cases including the case name, case number, the
attorney assigned to the case, whether cocaine base alone
or both cocaine base and cocaine powder were involved,
and the race of the defendant. The information regarding
the type of cocaine was obtained either from the
indictment or through an interview of the Deputy Federal
Public Defender assigned to represent the defendant. The
information regarding the race of the defendant was
obtained either from the presentence report or through an
interview of the Deputy Federal Public Defender assigned
to represent the defendant.

4. Of 24 defendants charged with cocaine base offense,
all—or 100%—were black.

I declare under penalty of perjury that the foregoing is
true and correct to the best of my knowledge.

MARLA BELLER
Paralegal Specialist

DATED: July 17, 1992

SELECTIVE PROSECUTION TAB

1/16/92
PAGE 1

NAME * CASE NUMBER * ATTY	TYPE	RACE
AMOS, DERRICK D. * CR 91-392 * DE	COCAINE BASE	BLACK
BRENT, ERICK * CR 90-651 * MA	COCAINE BASE	BLACK
BROWN, ANTHONY * CR 89-764 * SC	COCAINE BASE	BLACK
BURGESS, TIMOTHY * CR 90-573 * DNM	COCAINE BASE	BLACK
CHARLES, KEITH * CR 90-1432 * PA	COCAINE BASE	BLACK
CUNNINGHAM, RICK * CR 89-836 * KB	COCAINE POW/BASE	BLACK
CURRY, JOHNNIE * CR 90-1516 * KB	COCAINE BASE	BLACK
DAVIS, GOLDIE * CR 91-253 * CR	COCAINE BASE	BLACK
ETHRIDGE, ALFRED * CR 89-103 * AL	COCAINE BASE	BLACK
EVERETT, LONNIE * CR 91-117 * LM	COCAINE POW/BASE	BLACK
FLOYD, DION * CR 88-1678 * AL	COCAINE BASE	BLACK
KNIGHT, GEO. * CR 91-216 * NM	COCAINE BASE	BLACK
LAUDERDALE, Q. * CR 90-570 * DL	COCAINE BASE	BLACK
LIVINGSTON, T. * CR 90-652 * KJB	COCAINE BASE	BLACK
MARTIN, TONY * CR 91-95 * AE	COCAINE BASE	BLACK
PALMER, OSCAR * CR 90-1184 * DNM	COCAINE BASE	BLACK
POLLARD, SAJPSON * CR 89-160 * CK	COCAINE BASE	BLACK
RENFROE, BERNARD * CR 91-422 * PLA	COCAINE BASE	BLACK
STONE, TIMOTHY * CR 90-747 * RR	COCAINE BASE	BLACK
TILMON, LOMARR * CR 91-425 * NLE	COCAINE BASE	BLACK
VERRET, DEJUAN * CR 90-95 * AE	COCAINE BASE	BLACK
WILLIAMS, LONNIE * CR 88-504 * JF	COCAINE BASE	BLACK
WILLIAMS, MICHAEL * CR 90-523 * MS	COCAINE BASE	BLACK
WYCHE, DAVID * CR 90-969 * MA	COCAINE BASE	BLACK

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CR92-336-CBM

UNITED STATES OF AMERICA, *Plaintiff,*

v.

CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE,
AARON HAMPTON, FREDDIE MACK, SHELTON AUNTWAN
MARTIN, *Defendants.*GOVERNMENT'S MOTION FOR RECONSIDERATION
OF ORDER FOR DISCOVERY RE: SELECTIVE PROS-
ECUTION; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF RALPH
LOCHRIDGE, MARK CAMPBELL; JEFFREY
COCHRAN; DAVID C. SCHEPER; LAWRENCE H.
CHO

(UNDER SEAL)

Plaintiff, United States of America, hereby applies to this Court to reconsider its order to compel discovery re selective prosecution. This motion is based upon the attached Memorandum of Points and Authorities and the attached Declarations of Ralph Lochridge, Mark Campbell, Jeffrey Cochran, David C. Scheper,

DECLARATION OF RALPH LOCHRIDGE

I, Ralph Lochridge, hereby declare as follows:

1. I am a Special Agent of the Drug Enforcement Administration (DEA) and have been so employed for the

past 21 years. I was a field agent in enforcement operations for 17 years, and have been serving as the Public Information Officer for the DEA Los Angeles Division for the past four years.

2. I have received training in and investigated over 500 cases involving almost all controlled substances and money laundering. With respect to cocaine base, in 1987 I was the case agent for the first DEA investigation launched in the Los Angeles area concerning a major crack cocaine trafficking organization.

3. As a Public Information Officer, it is my duty and responsibility to be knowledgeable about the investigations and various law enforcement efforts of the DEA worldwide. My knowledge is based upon numerous reports and publications issued by DEA, as well as my personal experience in investigating cases, speaking with active DEA enforcement agents, and attending various seminars, meetings, lectures, and conventions concerning narcotics enforcement efforts.

4. As a Public Information Officer, I am in a unique position within DEA which allows me access to all investigations throughout the Los Angeles division. All significant cases and major investigations are forwarded to my office for review and possible dissemination to the public.

5. It has been my experience and the experience of other agents that narcotics offenders as a whole cover an entire spectrum of different races, sexes, and religions. However, if one were to focus in on various types of narcotic substances, there is a distinct pattern indicating that various ethnic groups play a larger role in certain types of narcotics offenses. For example:

a. A large proportion of large scale marijuana growers are white.

b. Traditionally, a large proportion of methamphetamine labs were operated by white males that belonged to outlaw

Motorcycle gangs. However, recently there has been an upsurge of Hispanic operators from Mexico.

c. A large proportion of crystal methamphetamine (or "ice") users and distributors are of polynesian descent.

d. A large proportion of Southeast Asian heroin traffickers emanate from that region and are therefore of Asian descent.

e. A large proportion of black tar heroin traffickers and users are of Hispanic descent, while a large proportion of Chinese white heroin ("China White") traffickers are of Chinese descent.

f. A large proportion of opium offenders are of Southeast Asian descent, with a large subsection of that group originating from Laos, Thailand, and Burma.

g. A major proportion of large scale powder cocaine traffickers are of Hispanic or South American descent.

h. With respect to cocaine base (or "crack"), virtually all major crack traffickers uncovered in the Los Angeles area have been black and operate primarily in black neighborhoods.

6. It has been my training and experience that there are various reasons for some of these racial patterns, including cultural, geographical origination, and other reasons. For example, the proportionately high percentage of Chinese traffickers in "China White" heroin cases is obviously because the narcotic substance originates from that locale. Similarly, the reason so many Laotians and other Southeast Asians are involved in opium trafficking is because opium has been accepted and utilized in many of the cultures in that geographic location. The recent influx of Hispanic operators in methamphetamine cases can be traced back to the recent laws making it much more difficult to obtain the chemicals necessary to produce that substance in the United States, but is still easily obtained in Mexico. A prime example of a narcotic substance that is endemic to a specific ethnic community is black tar heroin. Black tar

heroin is manufactured in Mexico by Mexican chemists, commonly smuggled by Mexican organizations, and generally distributed by Mexican nationals and Mexican-Americans, and used almost exclusively by abusers of Mexican descent.

7. With respect to cocaine base, or crack, trafficking in the Southern California area is primarily centered in the poorer, inner-city areas of South Central Los Angeles, which has a very large black community. Moreover, a great deal of the cocaine base trade is controlled by gangs in the South Central area, such as the Crips and Bloods, whose membership is almost exclusively black. These gangs operate primarily in those areas, recruiting from and employing other members in the neighborhoods to sell to crack abusers that live in that community.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

RALPH LOCHRIDGE
Special Agent,
Drug Enforcement Administration

DATED: September 15, 1992

DECLARATION OF MARK CAMPBELL

I, Mark Campbell, hereby declare and state as follows:

1. I am currently employed as a narcotics detective with the Inglewood Police Department. The majority of the population of Inglewood is black. I have been employed as a police officer there for over ten years and have been assigned to the narcotics unit for approximately three years.

2. In my experience as a narcotics detective, I have investigated easily over five hundred narcotics cases; approximately 70% have involved crack cocaine. I have participated in the investigation and arrests of over one thousand narcotics suspects, all of whom were of various races including white, black, and hispanic, of either sex, of varying ages from juveniles to senior citizens, and of varying socioeconomic backgrounds.

3. It has never been the policy of the Inglewood Police Department to arrest or investigate cases based on race. We conduct investigations according to the crimes committed regardless of race, sex, or other physical or sociological factors.

4. With respect to crack cocaine offenders, I have participated in the arrests of over five hundred suspects, the overwhelming majority of which were black. These offenders often live in primarily black neighborhoods, and prey upon and sell to others who live in that community.

5. Of the several hundred crack cocaine investigations I have participated in, only four cases were brought federally; the remaining cases were referred to and prosecuted by the Inglewood District Attorney's Office. The overwhelming majority of crack cocaine defendants arrested by the Inglewood Police Department and prosecuted by the District Attorney's Office were black.

6. All four of the cases that were brought federally were jointly investigated with a Special Agent of the Bureau of

Alcohol, Tobacco, and Firearms who was participating in a joint task force operation to target major narcotics traffickers that utilize firearms in violation of federal law. Three out of the four cases resulted in the recovery of illegally utilized firearms and the indictment of federal firearms violations. Such was the case with the defendants in this case.

7. As in all of my investigations, I was unaware of the race of the defendants in this case. When defendant Armstrong's crack ring first came to my attention, I did not know that he or any members of his organization were black, nor did I care. I began the investigation because I was informed that he was a major distributor of cocaine base in the Inglewood area, that he utilized firearms for protection of the narcotics trafficking, and that he often supplied dangerous and violent gang members in the area.

8. I requested the assistance of Bureau of Alcohol, Tobacco and Firearms Special Agent Jeffrey Cochran in the investigation due to the number of firearms the Armstrong ring utilized in connection with their narcotics trafficking.

9. When I initiated the investigation into the Armstrong crack ring, I knew neither the identities, nor the races of any of the other co-defendants. They became known to me only after they appeared at the crack sales and participated in the narcotics transactions.

10. I did not select defendants for investigation or prosecution; in essence, they selected themselves by appearing and playing various active roles in the crack trafficking ring. For example, defendants Rozelle, Mack, and Hampton were targeted because they delivered and/or sold crack cocaine to purchasers who had negotiated the transactions with defendant Armstrong. Defendant Martin was targeted after being identified as an armed guard inside the hotel room which Armstrong operated as a crack house.

I declare that the foregoing is true and correct to the best of my knowledge.

DATED: September 15, 1992

MARK CAMPBELL
Detective, Narcotics Division
Inglewood Police Department

DECLARATION OF JEFFREY COCHRAN

I, Jeffrey Cochran, declare and state as follows:

1. I am employed as a Special Agent with the Bureau of Alcohol, Tobacco and Firearms (ATF). I have been so employed for over three years. Prior to that I was a police officer in Orange, Texas for over three years, and investigated narcotics cases in conjunction with a federal and state joint task force. I am currently assigned to a joint task force with Inglewood Police Department to investigate federal narcotics and firearms violations.

2. It has never been the policy of ATF to base any investigative decisions on the basis of a defendant's race. Investigations are based solely on information regarding the nature of the federal criminal violations regardless of race, sex, religious affiliation, or any other sociological factors.

3. I was assigned to the City of Inglewood to investigate federal firearms violations in violation of 18 U.S.C. §§ 922, 924. I have worked closely with the Inglewood Police Department Narcotics Unit because of the great number of firearms recovered in narcotics investigations.

4. With respect to this case, I became involved in February 1992, after being informed that these defendants may be using firearms in the protection of a narcotics trafficking ring led by defendant Christopher Armstrong. During the investigation, we obtained evidence that firearms were being illegally utilized in such a manner, and I decided to recommend this case for federal prosecution.

5. Defendants were not chosen because of their race; in fact, at the initiation of the investigation I was unaware of how many suspects were involved in the ring, and was unaware of the race of any of the potential suspects. The investigation and subsequent recommendation for federal prosecution were based solely on the fact that there were provable federal firearms violations and federal narcotics

violations, which were sufficient to meet the guidelines of the United States Attorney's Office.

6. Since my assignment to the joint task force in Inglewood, I have participated in over 40-50 arrests of narcotics and/or firearms offenders of various ethnic origins, of which only three cases were referred for federal prosecution because they met the requisite quantity of narcotics and number of firearms involved. The remaining majority of narcotics and firearms offenders, many of whom were black, were referred to the State District Attorney's Office for prosecution.

JEFFREY COCHRAN

Special Agent

Alcohol, Tobacco and Firearms

DATED: September 15, 1992

DECLARATION OF DAVID C. SCHEPER

I, DAVID C. SCHEPER, hereby declare as follows:

1. I am an Assistant United States Attorney and Chief of the Major Crimes unit in the United States Attorney's Office for the Central District of California. I have been employed with the United States Attorney's Office for over five years and have served in a supervisory capacity for two years. From September 1990 to June 1992, I served as Chief of the Criminal Complaints Section—the Section in charge of directing and supervising most charging decisions for the Criminal Division of the United States Attorney's Office.

2. In all of my years at the United States Attorney's Office, including my tenure as Chief of the Criminal Complaints Section, a particular defendant's race has never played any role in a decision whether to charge him or her with a crime. In fact, the race of suspects brought for consideration for federal prosecution is hardly ever mentioned, and is in most cases unknown at the time a charging decision is rendered. In a relatively low proportion of cases, the race of a suspect is made known for the specific purpose of ensuring that arrests and prosecutions are not based upon unconstitutional motivations.

3. All charging decisions are made on the basis of whether a federal offense that meets this Office's guidelines has occurred, the overall strength of the evidence, the deterrence value and federal interest associated with the particular case, the criminal history of the suspects, and other race-neutral criteria.

4. In of 1992, while serving as the Chief of the Criminal Complaints Section, I supervised all charging decisions at that time, including the indictment decision of *United States v. Armstrong, et al*, CR No. 92-336-CBM.

5. The decision to charge this case was consistent with, and met the general criteria applied to all cases brought for consideration. In particular, in the *Armstrong* case there was over 100 grams of cocaine base involved, over twice the threshold necessary for a ten year mandatory minimum sentence; there were multiple sales involving multiple defendants, thereby indicating a fairly substantial crack cocaine ring; the case was jointly investigated with a federal agent from the Bureau of Alcohol, Tobacco and Firearms; there were multiple federal firearms violations intertwined with the narcotics trafficking; the overall evidence in the case was extremely strong, including audio and videotapes of defendants; threats had been made to arresting officers by defendant Armstrong; and several of the defendants had criminal histories including narcotics and firearms violations. Defendants' race played absolutely no role in the decision whether to charge them. I have no recollection of the race of the defendants ever being discussed.

6. During my tenure as Chief of the Criminal Complaints Section, there were many instances where the Office declined prosecution in narcotics cases, including crack cocaine cases. Decisions to decline prosecution, like decisions to accept cases for prosecution, were made on the basis of the criteria outlined above. No one is prosecuted because of his or her race, and no case was declined because of the race of the suspect.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DAVID C. SCHEPER

DATED: September 15, 1992

DECLARATION OF LAWRENCE H. CHO

I, LAWRENCE H. CHO hereby declare and state:

1. I am the Assistant United States Attorney assigned to prosecute the case of *United States v. Armstrong, et al*, 92-336-CBM.

2. Pursuant to this Court's Order of September 8, 1992, I contacted the Systems Manager with the Office of the United States Attorney, Gordon Gibson, who generated a listing of all defendants charged with narcotics violations under 21 U.S.C. §§ 841 and 846 for the past three years.

3. According to the printout, which is attached as Exhibit 1, there have been approximately 2,400 defendants charged with violations of 21 U.S.C. § 841, and approximately 1,700 defendants charged with violations of 21 U.S.C. § 846 in the past three years. According to Gordon Gibson, an accurate tally of the actual number of defendants charged is not yet attainable due to the fact that there are multiple entries in the system for certain defendants. However, it is safely estimated that over 2,000 have been charged under § 841, and over 1,700 have been charged under § 846.

4. On or about September 14th and 15th, 1992, an informal survey was conducted amongst members of the Major Narcotics Unit of the United States Attorney's Office concerning the race of various cocaine base defendants that have been brought by this Office. The survey yielded seven different non-black defendants that have been prosecuted for cocaine base violations; four of whom either were or are currently being represented by the Public Defender's Office:

(i) *United States v. Morales, et al*, CR 89-544-RJG, two non-black defendants, with defendant Tony Morales represented by Deputy Federal Public Defender Denise Meyer;

(ii) *United States v. Edwin Quintana Garcia*, CR 89-919-Kn;

(iii) *United States v. Carlos Cortez*, CR 89-520-R, defendant Cortez was represented by Deputy Federal Public Defender Karen Woods;

(iv) *United States v. Derrick Bines, et al*, CR 92-613-LEW, two out of eight defendants are non-black, with defendant Abraham Bernard Gutierrez is represented by Deputy Federal Public Defender Derek Li.

(v) *United States v. Moises Escamilla*, CR 92-620-Kn, with defendant Escamilla being represented by Deputy Federal Public Defender Myra Sun.

5. I have also ascertained from other members of my office the fact that the same selective prosecution request and supporting Declaration has been unsuccessfully submitted by the Public Defender before the Honorable J. Spencer Letts in *United States v. Thomas Arlington Pratt*, CR 91-953-JSL, and the Honorable Chief Judge Manuel L. Real in *United States v. Albert Jordan*, CR 91-1062(A)-R. A copy of the transcript of the hearing on the request before Judge Letts in *Pratt* is attached as Government's Exhibit 3, and a copy of Judge Real's Findings of Fact and Conclusions of Law in *Jordan* is attached as Government's Exhibit 4.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

LAWRENCE H. CHO

DATED: September 15, 1992

Crack Cocaine

Overview 1989



Drug Enforcement Administration
U.S. Department of Justice

This CRACK/COCAINE Overview 1989 was written by Staff Coordinators John W. Featherly and Eddie B. Hill of the Cocaine Investigations Section, under the direction of Charles Gutensohn, Chief of Cocaine Investigations Section and Michael Mullen, Deputy Chief-Cocaine Investigations Section.

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COVER: Numbers 187's refer to the California Criminal Code for homicides. This is often written on walls to signal an assault or to claim credit for a shooting. The figure's hand denotes "gang signing" which identifies gang or "set."

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CRACK/COCAINE

The past several years have witnessed a dramatic increase in the trafficking and use of cocaine. Wholesale and retail prices for cocaine hydrochloride (HCL) have declined, while purity levels for kilogram amounts of cocaine remain 90 percent and higher. Street-level gram purities have risen from 25 percent in 1981 to 70 percent in 1988. Seizures of cocaine HCL by the Drug Enforcement Administration (DEA) have increased substantially in the last decade. Approximately 60,000 kilograms were seized in 1988 compared to almost 200 in 1977. Cocaine investigations continue to constitute a major thrust of DEA enforcement activity. Cocaine arrests comprised nearly 65 percent of the DEA's total arrests in 1988.

A by-product of the increased supply and demand for cocaine in the United States has been the evolution of a phenomenon known as "crack." Crack is an inexpensive, highly addictive, physically and emotionally destructive cocaine derivative that is being abused in near epidemic proportions in some communities.

Abundant supplies of high purity cocaine (HCL) for lower prices have made it possible and highly profitable for dealers to develop less expensive cocaine products. Whereas cocaine HCL is available on the street at approximately 70 percent pure per gram at an average cost of \$100, crack is sold at purity levels of 75-90 percent for \$10 per 1/10th of a gram. Never before has any form of cocaine been available at such low cost and high potency.

The availability of crack was first reported in Los Angeles, San Diego, and Houston in 1981. This form of cocaine abuse was considered a localized phenomenon until late 1985. It was then that crack became a serious problem in New York City. Crack cocaine literally exploded on the drug scene during 1986 and was reported

available in 28 states and the District of Columbia. It is currently available in almost every state. (See Figure 1).

The use of crack cocaine has evolved, in a few years time, to become a major medical problem. At this time, there is no separation of cocaine (HCL) and crack cocaine statistics. Admissions to cocaine treatment programs as well as cocaine-related emergencies and deaths continue to mount. Estimated cocaine-related hospital emergencies have increased significantly since 1984. (See Figure 2)

The number of Drug Abuse Warning Network (DAWN) cocaine related hospital emergencies reported nationwide during 1987 was the highest yet recorded, increasing by more than 60 percent over the previous year's record total. During 1987, 32,776 cocaine-related hospital emergencies were reported through DAWN, as compared to 18,991 emergencies reported during 1986. Since 1984, there has been a marked increase in the number of cocaine-related hospital emergencies reported through DAWN nationwide. (See Figure 3).

COCAINE ABUSE INDICATORS, 1984-1988

	1984	1985	1986	1987	1988
Hospital Emergencies Reported Through the DAWN System	8,201	10,371	18,991	32,776	20,192
					*Jan-Sept
Cocaine-Related Deaths (less New York City) data	666	748	1,269	1,805	893
					*(1st 6 months data) (est.)

The first reported smoking of cocaine occurred in Peru during early 1976. This South American practice involves smoking coca paste, which is an extract produced during the manufacture of cocaine from coca leaves. From Peru coca paste smoking has spread to Colombia, Bolivia, Ecuador, and other Latin American countries. Coca paste,

also known as cocaine sulfate or basuco, can contain up to 80 percent cocaine sulfate. Other alkaloids that are found in coca leaves are benzoic acid, kerosene, sulfuric acid and other impurities. Coca paste smoking is the most inexpensive form of cocaine abuse because it sells for as little as one dollar per dosage unit. It is usually sprinkled on tobacco or marijuana leaves and smoked. Heavy addiction often results in severe physical and mental disorders primarily because of impurities found in the paste.

Coca paste is prevalent in illicit trafficking where it is intended for conversion into cocaine hydrochloride. It is often smuggled from Peru and Bolivia to laboratories in Colombia, Ecuador, Central American and, more recently, South Florida. It is rarely sold at the user level in the United States and is primarily restricted to upper-level dealers who have technical resources for chemical processing. Sporadic episodes of coca paste smoking, however, have been recently observed in New York, Los Angeles, and Miami. These represent the first incidence of use by foreign nationals involved in cocaine processing and trafficking.

Freebase is the purified base form of cocaine processed from the hydrochloride salt using flammable chemicals, such as ether. It appears as a white, crystalline powder. Freebase was introduced as a method of smoking cocaine in California during the mid-1970's. During this period, freebase use was generally restricted to hard core abusers who would often spend thousands of dollars smoking freebase in just a few days time. The freebasing of cocaine hydrochloride with ether was a complex chemical process that risked fires or explosions, in addition to being expensive.

In the past year the use of crack has become increasingly prevalent in many metropolitan areas. Crack is also referred to "rock," "base," "freebase," "cooked cocaine," or "gravel." Unlike the processing of freebase

crack is made without flammable chemicals like the highly explosive ether. The base form of crack, however, is manufactured by mixing cocaine hydrochloride with either baking soda and water or ammonia and water, thus eliminating the dangers of explosion or fire encountered with traditional freebasing.

Unlike cocaine hydrochloride, crack or other base forms of cocaine, can be heated. The fumes can then be inhaled or smoked, but the hydrochloride must be converted back to a relatively pure base state before it is suitable for smoking.

Cocaine freebase crack differs from crude cocaine base in that freebase (or crack) does not contain companion cocaine alkaloids, solvents or other residue from the leaf extraction process. It can be described as a "backwards" chemical procedure, starting with cocaine hydrochloride that is sold as street cocaine. Through simple chemical procedures, the cocaine alkaloid (benzoylecgonine) is "freed" from the hydrochloride salt, thus yielding cocaine as the "freed" or freebase.

It is important to note that freebase (or crack) and crude cocaine base are both classified as cocaine base. Freebase (or crack) is a cleaner and purer form of cocaine base since it undergoes a double-cleansing process (i.e., from cocaine base to cocaine HCL and back to cocaine base). Crude cocaine base, however, is a less pure form of cocaine base made directly from coca paste.

The smoking of crack is the most efficient way of ingesting cocaine and the crack user receives an almost instantaneous, intense high lasting only a short period of time (usually eight to ten minutes) which is often followed by depression and manic episodes. The user is often in a situation where he must consume larger and larger amounts of crack to even out these extreme periods of crack highs and lows. Therefore, the primary danger of crack is the drug's ability to cause an extremely rapid and severe

addiction that controls the users' behavior and dominates their lives. Many crack users also become addicted to alcohol, tranquilizers, or heroin which are all taken to alleviate the unpleasant side-effects of crack use.

The majority of crack available in the United States was first believed to originate from independent, cottage industry traffickers. DEA investigations in late 1986 and early 1987, however, began to delineate a fundamental change in the structure of crack trafficking. Several large scale trafficking groups, whose structure is beginning to approach that of mid-level cocaine or heroin dealers, have begun to emerge. Their presence (i.e., corruption, homicides) has become apparent as power struggles over drug territory develop among successful, small cottage industry groups, inner-city street gangs, and large-scale Jamaican organizations that attempt to expand their marketing area.

CREATING THE MARKET

Crack cocaine is the fast food of drugs. The consumer is supplied with a ready to use material that can be purchased quickly and for small amounts of money. This opens the consumer market to a wider spectrum of abusers, including youth and the poor. Cases have been documented where users have spent hundreds of thousands of dollars by buying \$10 and \$20 "rocks" over the course of a one year period.

Since it is virtually impossible to produce the amounts of money needed to sustain a crack habit, the frequent or compulsive user is forced into criminal activities, e.g., robbery, drug trafficking, prostitution etc. to generate the needed funds to purchase the drug.

Crack dealers do not need a large central supplier, so going into this business is relatively safe and cost efficient. Organizations that typify the traditional cocaine operations

are usually nonexistent in crack sales. The crack sales are usually conducted by various street gang members or "sets."

STREET GANGS

CRIPS GANGS

The Crips gangs was initially said to have been formed by Raymond Washington of Los Angeles, California. Their first activity was on a high school campus, in south-central Los Angeles. They were most likely named after the "Tales of the Crypt" movie or a comic book of the same name. Their gang color, blue, was derived from Washington High School in Los Angeles. Crips generally wear a blue bandanna or handkerchief on their person or blue article of clothing (shirt, shoelace, jacket, hat, belt, hair roller). They often refer to each other as "Cuz." They use the letter "C" to replace the letter "B" in conversations and writings. They don't use the letter "B" because their rival, the Bloods, gang name starts with the letter "B". They write blue graffiti on walls to make boundaries, and sign their messages "CRIPS," "CUZ" "B/K" (Blood Killer) or "P/K" (Piru Killer). They will fight among sets as well as with other gang "sets."

BLOOD GANGS

The Bloods gangs were reportedly founded by Sylvester Scott and Vincent Owen. They were called Compton Pirus from West Pirus Street, and developed to protect themselves from CRIPS. Their gang color, red, was derived from Centennial High School colors in Compton, California. Bloods wear red "rags" or red articles of clothing. They refer to each other as "BLOOD", "PIRU", "C/K". They seldom, if ever, fight among themselves. The Bloods sets are rumored to be the most ruthless of Los Angeles street gangs next to the Crips.

CRIPS AND BLOODS GANG MEMBER PROFILE

1. Black Males 12 to 24 years of age.
Primary Age: 12-20 Most Violent Age Group: 14-18
Average Age: 18 (Shot Callers: Late 20s to Early 30s (Leaders))
2. Rarely have identification on their person.
3. Use alias names or nicknames.
4. Hairstyles are close cropped or jeri curls.
5. Give local addresses and phone numbers. However, they often use L.A. zip codes and areas codes.
6. Clothing is predominantly blue for Crips and red for Bloods/Pirus.
 - a. FILA brand jogging outfits and tennis shoes. (Fad items that change regularly)
 - b. National baseball/football jackets and caps (usually adhering to gang color themes).
 - c. ADIDAS graphic sweatshirts.
 - d. Levis 501 or blue/brown cotton work pants. Pants are worn low on hips called "sagging".
7. Non-verbal communications
 - a. Wall writing (graffiti) to communicate hostility, territory boundaries, and respect for dead members. These writings are often the first signs of gang infiltration. Hand signals that signify gang affiliation (see Diagram 4).
8. Large gold chains and rings.
9. Initially defendants would admit gang affiliations when arrested, however recently they have been reluctant to identify their gang connections.

MENTALITY OF CRIPS AND BLOODS STREET GANGS

Extremely violent.

No remorse when killing innocent by-standers.

Will kill police officers in cold blood; this type of violence brings greater prestige to the shooter.

Philosophy changing from controlling neighborhoods to making large amounts of money.

The more successful drug sets are becoming organized. They operate in a more business-like manner, are profit-oriented, and sophisticated in tactics, i.e., use of computers, and standard business practices.

Crips and Bloods sets are showing signs of cooperating with each other in drug trafficking to promote drug sales and to set up funds for bail and attorneys.

Older members are purchasing legitimate businesses such as car washes, auto painting/body and fender shops, auto dealerships, liquor stores, motels, etc. to launder money.

SETS AND TERRITORY

The two most notorious Los Angeles gangs, the Bloods and Crips, are not really gangs at all. Instead, the names denote legendary confederations among hundreds of subgroups, or "sets". Sets are formed along neighborhood lines, and only a few have more than 100 members (bangers), 20 to 30 members is commonplace. Leadership is usually collective, and internal organization is rudimentary. One gang expert with the Los Angeles Police Department, Deputy Chief Glenn Levant, states "most sets are as casually organized as a pickup basketball game. Bloods wear red and Crips wear blue; traditionally, each gang member wears or carries (a bandanna) his "rag" to show his colors." (Many gangs also use "signs", which are hand gestures like a letter of the deaf alphabet, for

identification when the members are not wearing their colors.) Local variations on the theme are endless, the Crips gangs are almost as likely to fight each other, as they are to fight the Bloods.

The days when rival gangs fought each other only over turf and colors are fading fast. In Los Angeles, Chicago, New York and dozens of other cities, gang conflicts have become a form of urban-guerrilla warfare over drug trafficking. Informers, welshers and competitors are ruthlessly punished, many have been assassinated. Gang turf, which is still demarcated with graffiti in Los Angeles, now involves more than bragging rights; it is sales territory. Some gang graffiti are coded threats. One in south-central Los Angeles reads as follows: "Big Hawk 1987 BSVG c 187." In translation Big Hawk is a gang member's street name; BSVG stands for Blood Stone Villains Gang, a Blood set. The low-case c, which is deliberately x'd out, indicated that the writer kills Crips, and the number 187 refers to the section of the California criminal code for murder.

The crack gangs, dealers, posses, or whatever label you wish to apply, have many similar characteristics. Poverty is the seed from which they all develop whether it be in the slums of New York and Los Angeles for the Bloods and Crips or the slums of Kingston, Jamaica. Crime is the ladder, not only to success, but to the next step in the direction of daily survival. The other common characteristic, although not universal, is that their origins are from minority groupings. The third point is youth. For the purpose of this publication, youths are considered anyone up to the age of twenty-five. Socioeconomic factors such as poverty and poor living conditions continue to be the major factors in the recruitment of youth into these gangs.

JAMAICAN GANGS

When one thinks of Jamaicans gangs, one immediately thinks of drugs and guns which are equated with violence. Jamaicans are distributing crack throughout the country in organized gangs called POSSES. The appearance of Jamaican Posses or "Passes" within the United States is thought to have evolved around 1974. Jamaican gangs like the Raetown Boys and the Dunkirk Boys (well organized Jamaican gangs) probably arrived in New York City in 1976. Posses have turned from roles as extortionists and "hitmen" to the trafficking of crack cocaine.

Jamaicans, when they infiltrate a new area, will seek out single black females, with dependents who are generally on public assistance, to facilitate their operations by securing rental cars, leasing apartments and stores to distribute the crack.

Jamaicans are now using letters to code telephone numbers in their address and telephone directories.

Jamaicans also utilize rental cars, buses and AMTRAK trains for their couriers to transport cocaine HCL from large urban areas to other distribution sites in the United States and Canada. Invariably, the cocaine HCL will be converted to crack locally.

The following is an outline of Jamaican Posses:

1. Originated in ghettos of Kingston between 1974 and 1976.

2. Clanish, will not admit non-Jamaicans in inner circle. Posses based on geographical and political ties:

Roles:

- 1) Delineate and protect political zones from opposition.
- 2) Raise funds for affiliated political party through crime.
- 3) Provide physical protection for drug traffickers.

Independence:

Posses are now generally independent from political ties. Money and power are now more important than political allegiance.

Political Parties:

- Jamaican Labor Party (JLP)
- Peoples National Party (PNP)

Largest Posses:

- Shower (JLP)
- Hot Steppers (PNP)

Tolerance:

Posses will, on occasion, work together in U.S., but not in Jamaica.

Ramifications:

- 1) Money from drugs and guns are pouring into Jamaica, creating a false and unstable economic base.
- 2) A generation of youth are being corrupted.

JAMAICAN POSSES PROFILE

1. Black males of Jamaican decent 17 to 35
2. Recruited in Jamaica
3. Indiscriminate use of high powered weapons
4. Extremely violent behavior
5. Use of rental/lease vehicles, Volvos preferred
6. False identity a rule
7. Headquartered in local Jamaican clubs and restaurants

MAJOR POSSES OPERATING IN THE UNITED STATES

Shower Posse—Miami, New York, Philadelphia, Pittsburgh, Boston, Cleveland, Dallas, Washington, D.C., Los

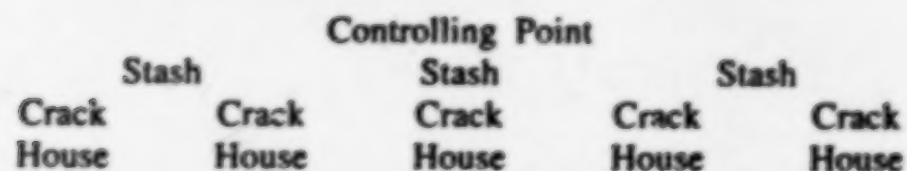
Angeles, Seattle, Denver, Kansas City, Atlanta, and Detroit.

Waterhouse Posse—New York, Washington, D.C., Atlanta, Miami, Boston, Philadelphia, Cleveland, St. Louis, Kansas City, Houston, and Los Angeles.

Spangler Posse—New York, Boston, Washington, D.C., Philadelphia, Pittsburg, Atlanta, Miami, Houston, Dallas, Cleveland, Los Angeles, and Seattle.

Montego Bay Posse—New York, Boston, Washington, D.C., Philadelphia, Pittsburg, Cleveland, Atlanta, Miami, Houston, and Seattle.

The following is a diagram of Jamaican domestic crack distribution methodology.



Jamaicans traditionally import and/or distribute small amounts of cocaine, crack and marijuana. Commercial airlines are the preferred method of shipment of drugs and money. They also utilize Federal Express, rental trucks, rental/lease vehicles, and public transportation.

Couriers:

Primarily Jamaican females

Several couriers on each flight (unknown to each other)

Concealment Methods:

Body, luggage, packages marked as food items, presents, etc.

Payments to key Posse members:

- 1) Wire transfer when under \$10,000
- 2) Courier when over \$10,000

Role of Women:

Act as couriers, rent apartments, cars, and utilities in their names, and register cars. As informants, they can be excellent sources of information on selected operations.

Narcotics Distribution:

High level dealers don't pay for drugs until after they are sold.

Street dealers recruited from Jamaican/U.S. communities. American Blacks used at lower levels.

Businesses:

Garages, music and record shops, auto body repair, Reggae bands, import/export companies, restaurants*, boutiques*, rental car and truck companies.**

* Meeting locations and possible drug outlets

** Used to transport money, drugs, and firearms

In reviewing the 1950's Kefauver Committee conclusions on organized crime, they appear to be very similar to the conclusions one might make concerning gangs distributing crack today. These gangs seem to have the same evolving crime pattern as the traditional organized crime families have had in the past.

The following is a point-by-point comparison of the 1950's Kefauver Committee conclusions on organized crime as compared to the crack gang problem of today.

FINDING AND CONCLUSIONS

Kefauver Committee

Crack Trafficking Gangs

- | | |
|--|--|
| 1. Organized Crime is entrenched mainly in the large cities. | Entrenched mainly in large cities, with some rural representation. |
|--|--|

Kefauver Committee

- | | |
|--|---|
| 2. Enforcement and punishment by murder, other violence. | Indiscriminate use of violence to control selling areas; including murder. Operate on a "no innocent bystander" theory. |
| 3. Main families maintain a loose control over affiliates. | Splinter groups in cities outside of cities of origin maintain a loose association with main group/gang. |
| 4. Association is based on ethnic/geographical location. | Informal association based on ethnic and geographical backgrounds. |
| 5. Organized crime groups control and monopolize distribution areas. | Gangs mark turf with graffiti and/or violence to insure territorial control. |
| 6. Organizers, leaders, dons etc. are removed from direct law enforcement action by use of "soliders" or street people. | Gang leaders or founders insulate themselves by the use of youth and/or street people. |
| 7. Most profits remain in organization for use by leaders to finance their continuing operation. | Profits from crack sales finance operations. |
| 8. Large scale narcotics distribution continuously use interstate communication and transportation facilities to conduct their business. | Crack gangs, as a matter of course, use car phones, fax machines, commercial planes and trains to carry out business. |
| 9. Wherever narcotics are openly allowed to be distributed public corruption is likely. | Crack sales are openly conducted in areas of understaffed and/or under paid police officers. Corruption is becoming widespread. |

*Crack Trafficking Gangs***SIMILARITIES SHARED BY ORGANIZED CRIME AND THE STREET NARCOTIC GANGS**

1. The Treasury of the United States is being defrauded of large sums of money by these criminal gangs.
2. Lawyers and accountants are still in close contact with criminal gangs or individual gangsters and some of them are violating canons of ethics and may even be an integral part of the criminal conspiracies of their clients.
3. Legitimate businessmen are aiding the interests of the underworld by making their facilities available to criminal enterprises or by awarding valuable franchises and contracts to notorious criminals.

DEA Enforcement Effort

DEA crack teams are now operational in fifteen (15) cities including Minneapolis, Dallas, Denver, Detroit, Houston, Miami, Fort Myers, Fort Lauderdale, New York City, Phoenix, San Diego, San Francisco, Kansas City, Seattle and Los Angeles.

Formal crack teams have not yet been implemented in Atlanta and Philadelphia since the crack problem is not considered severe in these cities. The crack situation, however, continues to be monitored in the event that these teams may be needed at a later date. St. Louis will establish a crack team in the near future as will Washington, D.C.

DEA is striking at the source. This is being done by operations such as SNOWCAP, BOLIVAR and CALICO that target the coca-growing countries. The operations are being conducted by DEA agents and elements of the U.S. military in conjunction with the police departments and military of the involved foreign country.

Secondly, DEA is attempting to target drug smugglers with operations such as ALLIANCE and PIPELINE. These operations target drug smuggling groups that operate on the U.S. borders and on the nations highways.

Finally, DEA is targeting established drug organizations and traffickers with DEA Crack Task Forces, BJA funded state and local enforcement task forces, and community support in the area of demand reduction. DEA HQS has established several operations directed at the crack cocaine problem in the form of Special Enforcement Operations (SEO's) and an intelligence project (SEP) that will develop a crack/gang-related data base. These operations are headquarters directed and field division supportive.

DOJ/BJA Crack Task Forces

The Anti-Drug Abuse Act of 1988 has provided approximately \$150 million to the Department of Justice, Bureau of Justice Assistance (BJA) grant program for fiscal 89 narcotic related programs. DEA submitted a program brief (i.e., concept paper) for the establishment of a crack investigation program to BJA. This brief was incorporated into the BJA grant program and \$1.5 million was made available for the establishment of five (5) Crack Task Forces. Subsequently, BJA Task Forces are established in the following cities: Los Angeles, CA; Houston, TX; Minneapolis, MN; Denver, CO; Detroit, MI; Miami, FL; Baltimore, MD; Nassau County, NY and San Diego, CA (see Figure 5). DEA assists these Task Forces through mutual sharing of timely information on crack trafficking organizations and by attending the periodic meetings of these Task Forces sponsored by BJA. BJA also funds street sales units (local police departments) in New Orleans, LA; Birmingham, AL; Seattle, WA; Long Beach, CA; Orlando, FL; San Antonio, TX; Oakland, CA and Rochester, NY.

State and Local Task Forces

DEA supports six (6) state and local task forces and 12 shared funding task forces in which DEA special agents and officers from state and local law enforcement agencies

cooperate on narcotics investigations in order to disrupt the illicit traffic in certain geographic areas. By definition, these task forces are geared to mid-level and street violators. A number of major cities which are experiencing crack problems have these task forces in operation. These state and local task forces were recently enhanced by a \$10 million appropriation under the Anti-Drug Abuse Act of 1986.

Conclusion

Crack cocaine trafficking and abuse have become a serious problem for all law enforcement agencies throughout the United States. Although the problem has spread to rural and suburban areas, crack cocaine remains a predominantly inner-city, urban phenomenon that is mainly confined to minority sections. However, the use of crack is now manifesting itself in all strata of society. Large-scale, interstate trafficking networks controlled by Jamaicans, Haitians and Black street gangs dominate the manufacture and distribution of crack. Prices for this highly addictive form of cocaine base have remained stable and high levels of drug purity have been maintained since crack became prevalent on the American drug scene in early 1986. Kilogram and pound seizures, once the exception, are becoming more common. The cooperative relationships between Federal law enforcement agencies, DEA Crack Teams and state and local task forces have proven highly effective in targeting and immobilizing large-scale distributors and interstate trafficking networks. These cooperative efforts must continue in order to stem the crime and violence spawned by the crack cocaine phenomenon.

APPENDIX A
SYNOPSIS OF DEA FIELD DIVISION RESPONSES
ON CRACK COCAINE AS OF JANUARY 1, 1989

Atlanta—Crack is available in adequate consumer quantities throughout the Division and can be classified as a sporadic, retail-level trafficking situation. Georgia and the Carolinas are primarily transit states for crack originating in Florida and destined for the northeastern United States.

Boston—In the New England region, crack is found predominantly in the southern states of Connecticut, Rhode Island and Massachusetts. Connecticut, with its proximity to New York City, is experiencing the most significant crack problem in the Field Division. New Hampshire, Vermont and Maine have encountered very little crack use to date. Crack availability has increased in Stamford, CT and is imported from the Bronx, NY. The availability of crack has significantly risen in Providence, RI and is principally controlled by Dominican and Puerto Rican groups there.

Chicago—Chicago does not have a serious crack problem at this time. Sporadic appearances of crack have been reported in North Dakota, Indiana and Wisconsin. Crack houses have recently appeared in South Bend, IN and Peoria, IL. Crack cocaine availability, however, has increased in the Minneapolis-St. Paul areas.

Dallas—Crack remains a serious problem in Dallas, TX. Over 75 crack houses are currently operating in the city. Crack distribution is controlled by a 500-700 member Jamaican controlled cartel. Leaders of at least 27 Jamaican organizations comprising this cartel have been targeted for investigation. The DEA D/FW Airport State and Local

Task Force reports the arrest of two (2) or three (3) Jamaican crack or money couriers from Miami and New York on a daily basis. Over 20 Jamaican-related crack homicides have been reported in 1987. The Fort Worth Police Department reports that crack and fortified crack houses are becoming more prevalent. California is the main source for Tulsa, OK. Crack is readily available in Oklahoma City, with West Coast sources of supply.

Denver—Crack availability has increased tremendously in the last six (6) months. The Denver State and Local Task Force, in conjunction with the Denver Police Department, has conducted several crack investigations over the last two (2) years. These investigations revealed that crack houses in the city of Denver were run by Jamaicans with the assistance of locally recruited black females. The price of a retail level dose of crack cocaine (\$25 for one-tenth of a gram) is one of the highest in the nation. Suburban dealers convert their own cocaine HCL into crack rather than purchasing the substance from Jamaicans in metro Denver.

Detroit—Crack cocaine is readily available in the cities of Detroit and Flint. Limited quantities of crack have been reported in Kentucky and Ohio. Although heroin use is still a problem in Detroit, it is overshadowed by the availability of cocaine HCL and crack. It is estimated that 1,000 crack houses and street corner locations operate in Detroit at any given time. Intelligence information reveals that there are at least six (6) major crack trafficking organizations in the Detroit metro area. One of these groups converts 50 kilos of HCL into crack per week. Crack-related deaths and emergency room mentions have increased dramatically over the past several years.

Houston—The crack problem in the Houston Division has somewhat diminished. The crack problem in the city of

Houston is essentially situated in predominantly black neighborhoods. Crack is supplied both locally and from sources in Miami and Los Angeles. The Houston Police Department has made over 580 arrests for crack sale/possessions over the last year. San Antonio is the only city in the Division which had a crack investigation in the last three (3) years. This investigation involved a small crack house operation.

Los Angeles—Crack is a problem of epidemic proportion in Los Angeles, Riverside, Santa Barbara and Las Vegas. Crack is available in multi-kilogram quantities throughout the Los Angeles area. Crack cocaine manufacture and distribution are primarily controlled by black street gangs (the Bloods or the Crips) in south central Los Angeles. Kilogram quantities can be purchased for \$15,500 to \$19,500. The black street gangs have distribution networks throughout the northwestern and southwestern United States. Crack has appeared in Hawaii, but is not considered a serious problem.

Miami—Crack cocaine is readily available on the streets of Miami, Ft. Lauderdale, Tampa, several areas in central Florida and the northern Florida cities of Tallahassee and Pensacola. Crack distributors from southern Florida are expanding operations into the Pensacola and Tallahassee area of northern Florida in an attempt to create new markets and/or take over existing crack markets. In FY-87, the Tampa Office participated in 100 crack investigations. The Metro-Dade Police Department reported 577 arrests in FY-87. It is estimated by local authorities that there are over 700 crack houses in Miami. The Ft. Lauderdale Office participated in over 1,500 arrests in FY-87. The Ft. Myers crack team is investigating a 75 member trafficking group that distributes throughout Florida, Georgia, the Carolinas and California. DEA Miami has identified two (2)

interstate trafficking networks, one (1) which spreads across Florida, Georgia, South Carolina and Tennessee, and the other involves the East Coast to New York, extending west, through Texas and Nevada to California.

Newark—The Newark Division reports no crack cases in FY-87. The crack situation in New Jersey has leveled off or is on the decline and no city in New Jersey has reported an increase in crack cases or in the use of crack. Crack, once readily available in New Jersey, is now only moderately available in Camden, Trenton, Patterson and Hackensack.

New Orleans—Crack continues to increase in popularity among cocaine abusers, particularly along the Gulf Coast. In Louisiana, metropolitan New Orleans has the largest crack problem. Abuse levels in New Orleans have increased to a level where suppliers are dealing in kilogram quantities. A black street gang (Crips) from Los Angeles has emerged as the main source of crack. The Shreveport Office reports two investigations that resulted in the seizure of 250 grams of crack. The availability of crack has declined in Monroe, Louisiana. The Mississippi Bureau of Narcotics reports the greatest increases (crack trafficking) in central and southeastern Mississippi (Gulfport and Pascagoula). A crack group consisting of 80 members was recently immobilized in Mississippi. Pascagoula, Mississippi has reported a five (5) ounce crack seizure which originated in Los Angeles. Crack cocaine availability is on the rise in Alabama; however, the amounts surfacing are believed to be for personal use only.

New York—Crack trafficking and abuse continues to be a serious problem in New York City and the surrounding suburbs. It is available on a limited basis in upstate New York. Several large crack organizations, whose structure

approaches that of mid-level cocaine or heroin dealers, have appeared in New York City. The Division is investigating several organizations capable of supplying 10,000 vials of crack per week. Primary crack traffickers are of Dominican origin. During the first seven (7) months of FY-87, the NYCPD made 9,059 crack arrests, accounting for about 72 percent of all cocaine arrests.

Philadelphia—Crack cocaine houses, under control of Jamaican trafficking organizations, are beginning to surface in the Philadelphia Field Division. In early 1987, nearly two thousand vials of crack were seized in two (2) separate raids on crack houses in the city of Philadelphia. The Wilmington Office reports a crack problem in the southern Delaware area. Fifteen crack related arrests and 12 pounds of crack have been seized during 1987. These investigations centered around a Haitian farm labor community. Neither Harrisburg nor Pittsburgh report having a crack problem at this time.

Phoenix—Crack cocaine is available in the public housing areas of Phoenix and is dealt entirely by blacks. Crack is also readily available in Tucson. Crack cocaine in Arizona is supplied by the Crips and Bloods gangs of Los Angeles, California. In June 1987, the Phoenix State and Local Task Force culminated a four (4) month crack investigation that resulted in the arrest of 61 distributors (10 from the Crips gang) and the seizure of 600 grams of crack.

San Diego—There has been a considerable reduction in the involvement of black street gangs in crack distribution and related assaults and murders. This is the result of 35 Narcotics Task Force cases that targeted these gangs for immobilization. One (1) of these also resulted in 100 arrests and immobilized the principal crack gang in San Diego. Crack remains a serious problem in minority enclaves of the city and suburban areas.

San Francisco—Crack continues to be a problem in the San Francisco Bay area. There have been several instances of kilogram-size seizures in San Francisco and Oakland. The Sacramento area has experienced an enormous increase in crack houses and crack seizures. Gang members from Los Angeles have set up distribution systems in Sacramento. Random shootings involving the Crips and Bloods street gangs have occurred in Sacramento.

Seattle—Two (2) cities in the Division have measurable crack cocaine activity: Seattle, WA and Portland, OR. Two gangs, the Bloods and Crips, are attempting to expand their base of operations in these cities. Seattle Police estimate the operation of 50 crack houses at any time and in excess of 100 gang members in the metro area. Portland reports widespread availability of crack cocaine among all ethnic groups.

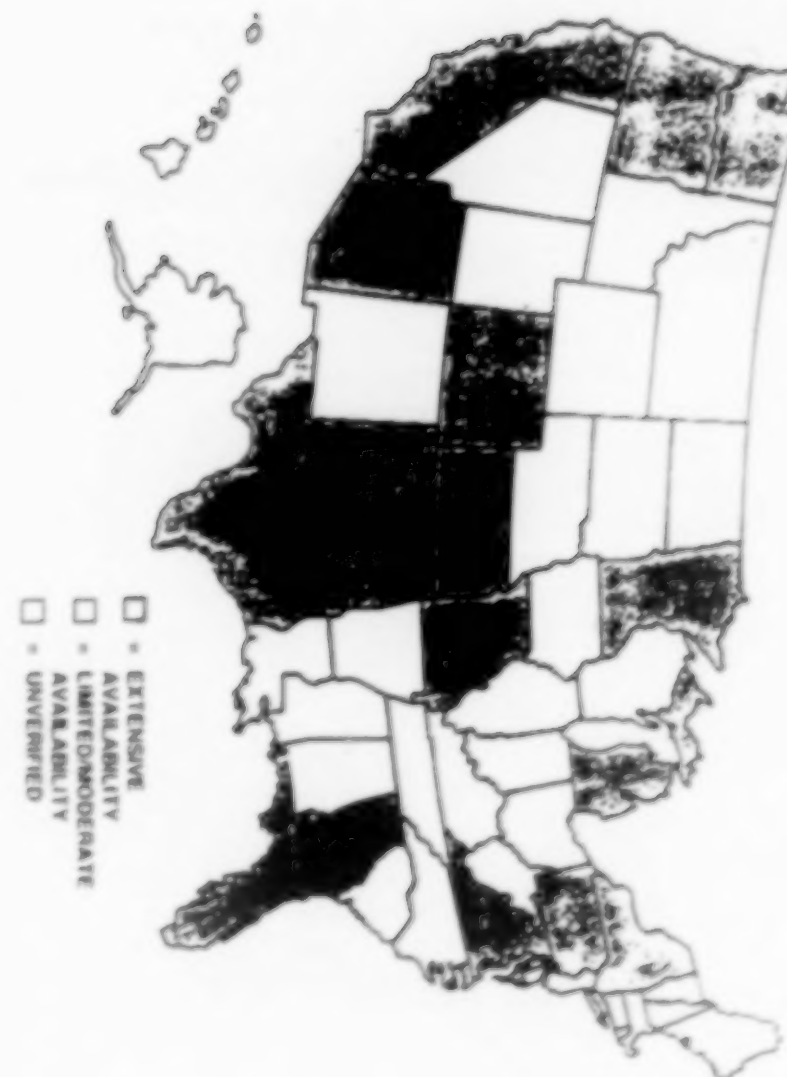
St. Louis—Crack cocaine does not pose a serious problem in St. Louis. The majority of crack arrests and seizures involve low level violators and street level dealers. Crack cocaine is a problem in Kansas City which reports substantial involvement of Jamaican traffickers in the distribution of both crack cocaine and cocaine HCL. Their level of crack distribution ranges from several pounds to several kilograms. Crack houses have been identified in the metropolitan area of Omaha, NE. Ready-made quantities of crack have been imported into the area from Los Angeles.

Washington, D.C.—The presence of crack in the Washington and Baltimore metro areas is not as large scale as first predicted. Currently, there has been some crack activity in the more rural Maryland locations, especially communities with large Haitian and Jamaican migrant worker populations. Haitians and Blacks are the main traffickers in Baltimore City. Crack is readily available in

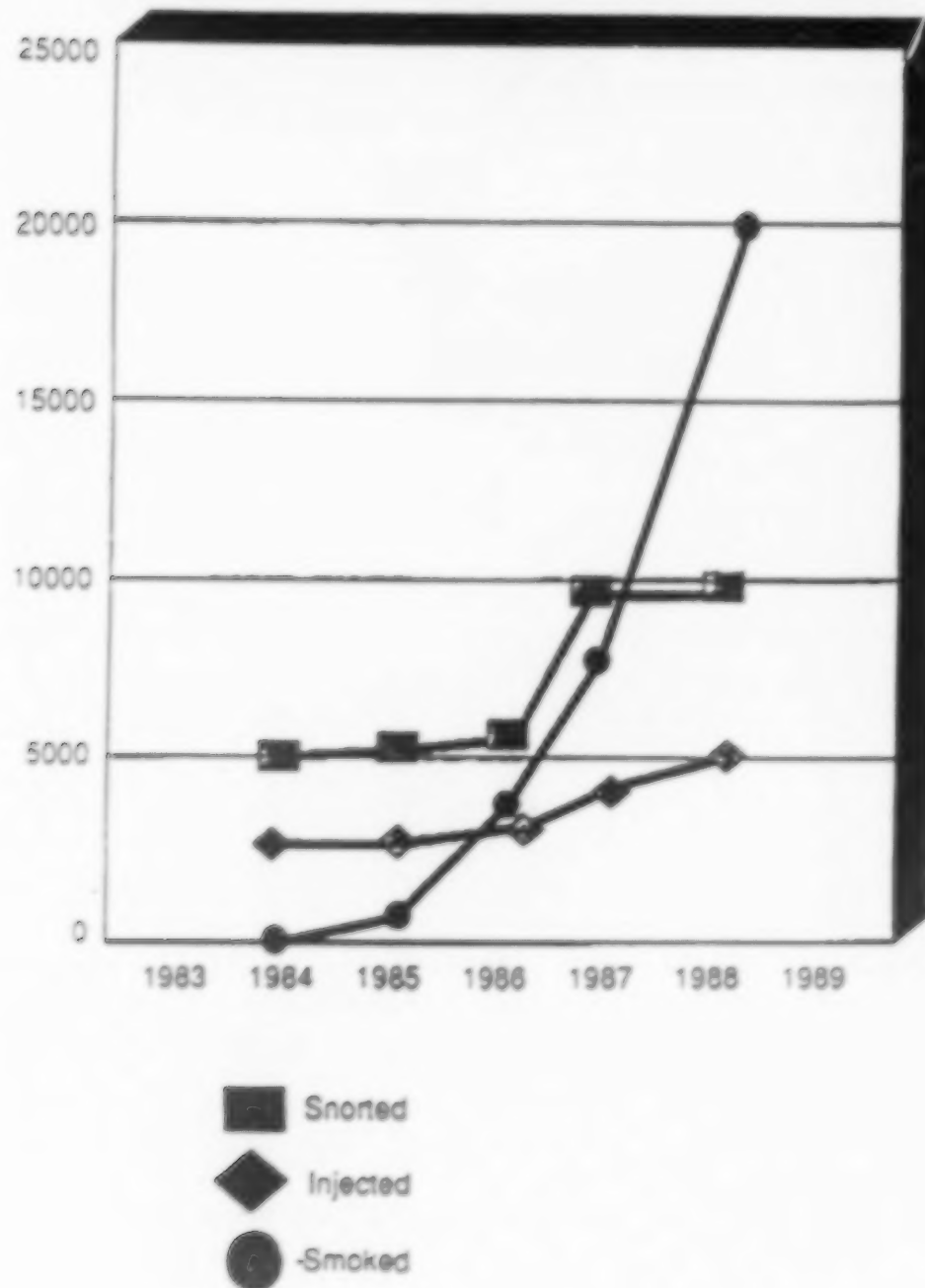
Salisbury and Hagerstown, MD and Martinsburg, WV. The Washington Office has noted an increase in the transportation of crack into National Airport, with nine (9) arrests noted since June 1987. A trend noted by the Washington Division Office Airport Group is the utilization of juvenile couriers, primarily black teenagers, to transport consignments of crack from New York City. This pattern has also been noted in the Norfolk, VA area. Arlington and Alexandria, VA police have raided several crack houses. Several crack arrests have also been made at the Amtrak Railroad Station in Washington, D.C.

A growing number of Jamaican distributors have entered the cocaine trade in Washington, D.C. They have established crack houses in the greater metropolitan area that may also be supplying the Norfolk and Richmond, VA areas. The violence associated with these drug distribution rings is escalating to alarming levels in the Washington, D.C. area with a number of murders attributed to "turf" battles among rival Jamaican and inner-city black trafficking organizations.

CRACK AVAILABILITY IN THE UNITED STATES
CY-1988



Cocaine Related Emergency Room Mentions



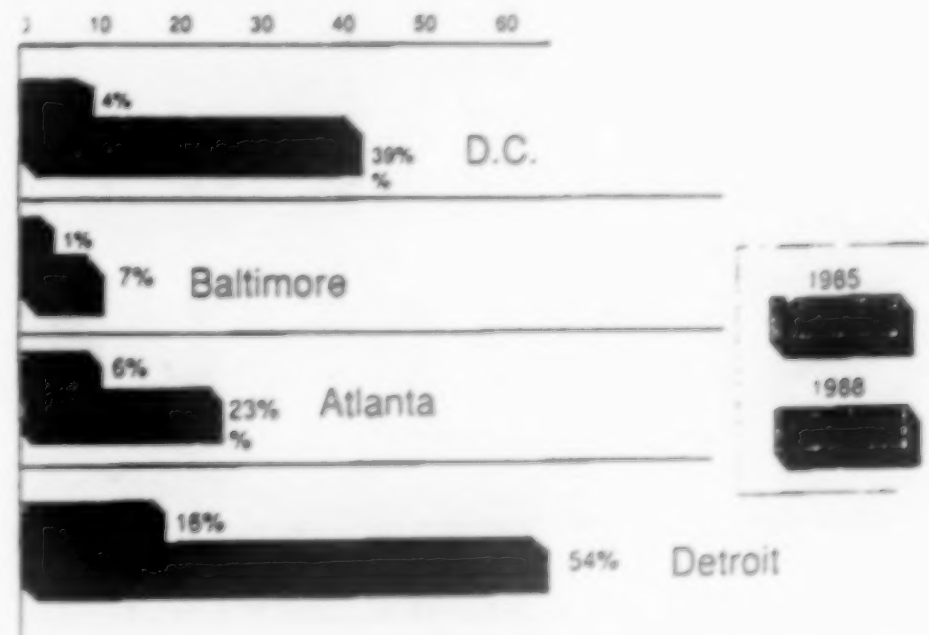
Cocaine and Crack

Population Estimates of

Age:	12 to 17	18 to 25	26 and older	total
Ever used	1.49 million	9.26 million	10.62 million	21.37 million

Crack's Role on Rise in Emergency Room Cases

The percentage of cocaine overdose cases in which crack was the form of cocaine used.



Total Dawn Emergency Room Mentions For Cocaine Smoking



These seven cities accounted for 78% of cocaine smoking ER mentions in 1995 and 81% of cocaine smoking ER mentions in 1997

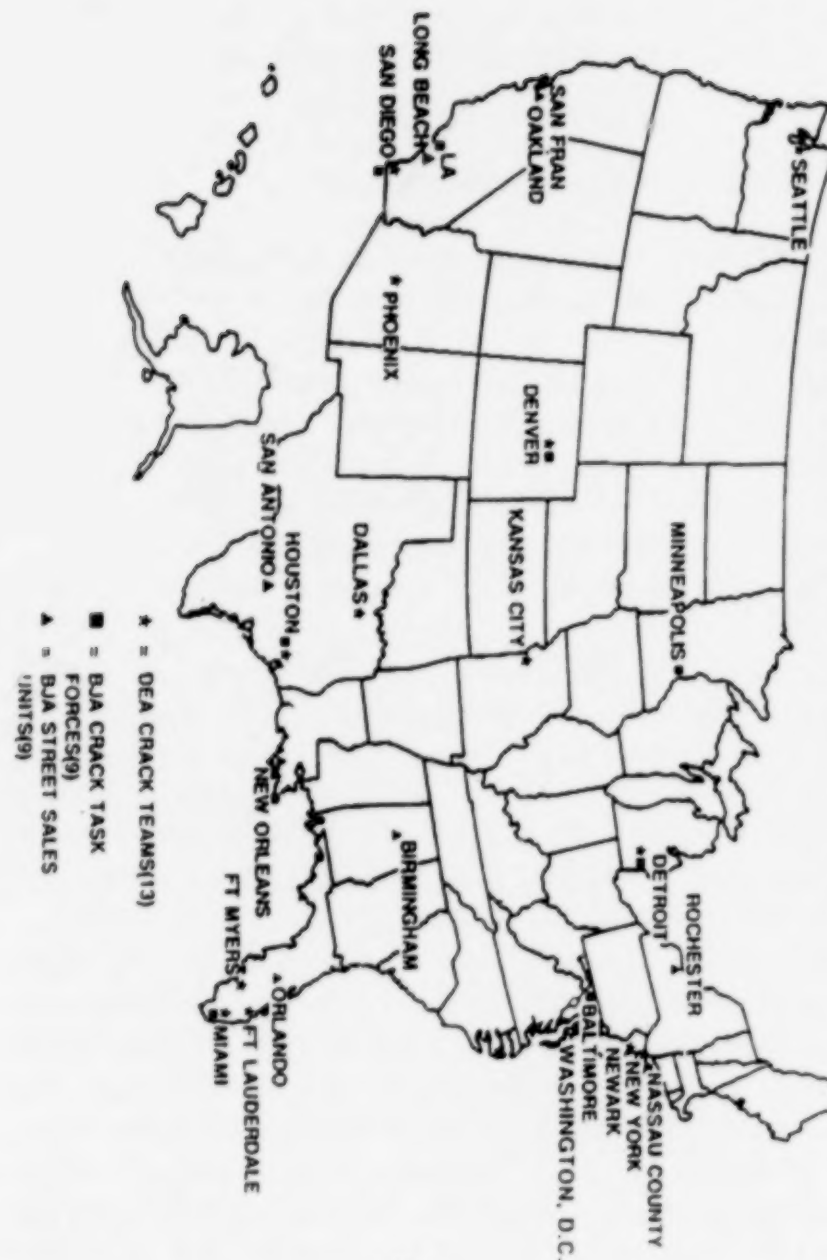
Crips and Bloods^{PS}

Hand Signs





LOCATIONS OF DEA CRACK TEAMS AND BJA CRACK TASK FORCES



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR91-953-JSL

UNITED STATES OF AMERICA, *Plaintiff,*

v.

THOMAS ARLINGTON PRATT, *Defendant.*

TRANSCRIPT OF PROCEEDINGS

Thursday, January 30, 1992

Los Angeles, California

Motion to Suppress

Volume 2

doesn't cause anybody to get prosecuted.

MR. GUNN: Well, except I think, Your Honor, the vast majority of cases that he refers gets accepted. I mean, we can put him back on the stand—

THE COURT: I can't speak to that, but I don't care. That just suggests to me that he is exercising his judgment.

Again, there are cases, of which this is not one, in which I do think the due process considerations are very real. Not just due process, but some others as well. I don't think this is one of them.

MR. GUNN: On this selective prosecution issue, Your Honor—

THE COURT: There I think your statistical basis is insufficient.

MR. GUNN: Insufficient?

THE COURT: Yes.

MR. GUNN: In terms of the number of people?

THE COURT: Yes.

MR. GUNN: I think that is why we need further discovery, Your Honor. I know statistically the chances of getting 23 out of 23, a hundred percent, when the real probability is—

THE COURT: You haven't even shown that; that's the problem.

MR. GUNN: Haven't shown what?

THE COURT: You haven't shown that because I don't know anything about where your people come from, I don't know anything about the difference between your people and people that go to panel people, and I don't know anything about the difference between them and those that have retained counsel.

THE COURT: But that's why I think we need discovery.

THE COURT: No.

What I am saying is, I think your 23 is statistically insignificant. Until you show me something about the population base entirely, I don't think that the 23 out of 23 shows anything.

MR. GUNN: Well, if you were choosing out of a random sample, it would certainly show something.

THE COURT: No, it wouldn't necessarily.

Twenty three in a row out of the 15 million doesn't. Twenty-three in a row out of five million doesn't.

MR. GUNN: Actually, Your Honor, I think statistics—

THE COURT: Then show me that.

MR. GUNN: There are statistical tables on what is called the binomial distribution.

THE COURT: I am aware of that, so show me that. You really haven't. You haven't done anything except that to show that you have 23 in a row.

MR. GUNN: I could try and submit authority that suggests the random sample for at least our office. You have the issue of whether our office is a random sample of the population as whole, but I think, assuming the sample base is our office—

THE COURT: The trouble you have, few just take—and I am not going to dwell on this very long—if you go to a statistician, he will say, I believe, that there is reason to believe that your sample is a very biased sample out of the population.

MR. GUNN: All right; that is an issue.

THE COURT: And then once you said that, he is going to say, "Until I know more about the potential for bias, I can't form a judgment about whether 23 in a row is statistically significant."

THE COURT: But the only way of getting the potential for bias is to look at all the cases outside our office, and that is I think where discovery is necessary.

THE COURT: I don't see why discovery is necessary. That is up to the government. I don't see why that is not up to you at some point. Show something.

Right now you haven't given me sufficient reason to believe that your experience shows anything about the population base.

MR. GUNN: I don't think we have access to as much of a data base as the government does. I mean, what you need to do is, you need to get a list of say all crack cocaine cases in this courthouse during the past year, and I don't know that—I don't know of anyway—the government would be able to get that information through—

THE COURT: I am not even not sure that does it.

I don't know—and I don't know that there is any way for me to find out in the first instance—whether there is a bias in the distribution of crime that says black people use crack cocaine, hispanic people use powdered cocaine, caucasian people use whatever it is they use. I don't know any of those things.

The fact that you have 23 in a row, crack, in truth there being so little reason to believe that it would reflect a bias, there is a considerable burden on you to show that it does.

MR. GUNN: It has to be explained either by the Federal Public Defender gets just black clients—

THE COURT: Maybe that the only people that use crack cocaine are black.

MR. GUNN: That's what I was going to say, or that—but I just would submit—

THE COURT: Or that you are only getting the ones that can't pay for it.

MR. GUNN: Right.

THE COURT: There are a lot of ways to be biased.

MR. GUNN: Right.

I guess what I am suggesting is, I think—I think, at least for purposes of discovery, it is not appropriate to say we haven't—that to just say, well, it is possible that all crack cocaine users or sellers are black.

And I don't think you can say that—

THE COURT: I am sorry, I am done arguing.

The burden on you, which in this court you haven't met, is to show some reason to believe that your sample reflects an illegitimate bias. So far, 23 in a row doesn't show me anything.

Show me a statistician, a bona fide, real person that can say it does, subject to my voir dire—and I do know how to do this—then maybe, but just saying that the public defenders had 23 in a row to me says nothing.

And you have to say something before you are entitled to do any discovery. And 23 in a row is nothing, stand alone.

Does that cover everything that we have today?

MS. DUNNE: The only issue is the last motion, notion to suppress statements. I am unclear on the Court's

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CR91-1062(A)-R

UNITED STATES OF AMERICA, *Plaintiff*,

v.

ALBERT JORDAN, *Defendant*.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

On February 24, 1992, this Court heard defendant Albert Jordan's motion for dismissal based upon his allegation that his prosecution in federal court violated his right to procedural due process. This motion was based upon the following grounds:

The referral of defendant's case from Inglewood Police Department to the Bureau of Alcohol, Tobacco and Firearms ("ATF") for possible prosecution in federal court violated defendant's right to procedural due process because the penalties for violations of 21 U.S.C. § 841 and 21 U.S.C. § 846 are higher in the federal system than their counterparts in the California state system.

Defendant Jordan appeared at the hearing with his counsel, Korey House. Assistant United States Attorney Christopher Tayback appeared on behalf of the government.

The Court has considered the pleadings, declarations and documents filed by the parties, and the testimony and oral argument presented to the hearing. Based on the foregoing and for good cause shown, IT IS HEREBY ORDERED that defendant Jordan's motion is DENIED. In connection with this order, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The declarations of Jeff Cochran and Mark Campbell, submitted by the government with respect to defendant's motion to dismiss for selective prosecution are accepted as the direct testimony of those witnesses with regard to defendant's motion to dismiss for violation of defendant's right to procedural due process.

2. The declaration of defendant Albert Jordan, submitted by defendant Jordan is accepted as his direct testimony.

3. Defendant was arrested in connection with this case for possession with intent to distribute in excess of one hundred grams of cocaine base, and the possession and use of five firearms in this case.

4. The testimony of Mark Campbell is credible in that he did not threaten defendant Jordan with a referral for federal prosecution.

5. The testimony of Mark Campbell is credible in that neither he nor any other police officer interrogated defendant Jordan after defendant was arrested.

6. The testimony of Mark Campbell is credible in that defendant was not referred to federal authorities for federal prosecution upon or because of defendant's invoking his Fifth Amendment rights, but rather because of the quantity of narcotics possessed by defendant, number and type of weapons possessed by defendant, and the gang-related nature of the criminal activity of defendant and co-defendant Frank Pate.

7. The testimony of defendant Jordan, to the extent that it conflicts with the testimony of Mark Campbell, is found not credible, and motivated by self-interest.

8. Defendant's criminal conduct was referred from the Inglewood Police Department to ATF Special Agent Jeff Cochran to present for federal prosecution. Special Agent Cochran works out of the Inglewood Police Department as part of a joint Inglewood Police Department-ATF task

force focusing on crimes related to gangs, drugs and firearms.

9. The ultimate decision to prosecute defendant federally was made by the Office of the United States Attorney.

10. The decision to refer the case to ATF was based on the Inglewood Police Department's Narcotics Unit's internal guidelines, in that defendant was determined to be an associate of a gang, possessed a large quantity of cocaine base with intent to distribute, and possessed firearms in relation to narcotics trafficking.

11. The decision of Special Agent Jeff Cochran to seek indictment from the Office of the United States Attorney for defendant's crimes was based on defendant's serious criminal conduct, specifically, defendant's possession of over 100 grams of cocaine base with intent to distribute, defendant's possession and use of five firearms in connection to a drug trafficking offense, and the gang-related nature of defendant's criminal conduct.

12. The federal government and the State of California are separate sovereigns.

13. Any Conclusions of Law deemed to be Findings of Fact are hereby incorporated by reference into these Findings of Fact.

CONCLUSIONS OF LAW

1. Prosecuting agencies have wide discretion in deciding whether or not to prosecute a given case and what charges to seek from a grand jury. *Wayte v. United States*, 470 U.S. 598, 607 (1985); *United States v. Sanchez*, 908 F.2d 1443, 1445 (9th Cir. 1990).

2. Federal prosecution of a federal crime in federal court that could have been or has been prosecuted in state court does not violate due process, even though the defendant may be subject to harsher penalties in the federal system. *United States v. Anderson*, 940 F.2d 593, 596 (10th Cir.

1991); *United States v. Turpin*, 920 F.2d 1377, 1388 (8th Cir. 1990), *cert. denied*, 111 S. Ct. 1428 (1991).

3. The federal government's decision to prosecute does not create a constitutional violation provided the decision is not based upon an unjustifiable standard, such as a defendant's exercise of his constitutional rights. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978).

4. Defendant presented no credible evidence that defendant's federal prosecution or the referral from Inglewood Police to the Bureau of Alcohol, Tobacco and Firearms was based on an unjustifiable standard.

5. Defendant was not prosecuted because he invoked his Fifth Amendment rights.

6. Under the doctrine of "dual sovereignty," a defendant may be prosecuted by two separate sovereigns for the exact same criminal conduct. *Bartkus v. Illinois*, 359 U.S. 121 (1959); *United States v. Figueroa-Soto*, 938 F.2d 1015 (9th Cir. 1991).

7. Defendant is not entitled to be prosecuted by only one sovereign or the other—either the state or the federal government. He can be prosecuted by both.

8. To the extent that any of the Findings of Fact are deemed to be Conclusions of Law, they are incorporated herein.

9. In light of the foregoing, defendant's motion to dismiss and for dismissal of the indictment based upon a violation of defendant's right to procedural due process is denied.

MANUEL L. REAL

Chief United States District Judge

Presented by:

CHRISTOPHER TAYBACK

Assistant United States Attorney

DATED: March 4, 1992

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CMV : 0049A1

DATE	NAME	CHARGE	COURT NO	IMPRISON YRS	IMPRISON MO	PAGE/SECTION
01/20/89	BARNET, TROY BOLANZO	21 - OBSTIN	CA 89-41			
01/20/89	ARIAS, JESSE	21 - OBSTIN	CA 89-50444			
01/20/89	MARTINO-VILLARIEL, JOSE	21 - OBSTIN	CA 89-50444	61	240	99
01/20/89	GARCIA, MAC NIO	21 - OBSTIN	CA 89-50444	61	162	60
01/20/89	PIEDRA-BIAS, ANABAD	21 - OBSTIN	CA 89-50444	50		
01/20/89	MORA, JOEL	21 - OBSTIN	CA 89-50444	50		
01/26/89	0120, OSCAR GUTIERREZ	21 - OBSTIN	CI 89-79	50		
01/26/89	FERRER, DOMINGO PORTIAGO	21 - OBSTIN	CA 89-79	50		
01/26/89	CEBILLO, FERNANDO	21 - OBSTIN	CA 89-78	50		
01/26/89	SCORZA, GABRIEL	21 - OBSTIN	CA 89-78	50		
01/26/89	EVERETT, TOMMIE	21 - OBSTIN	CA 89-80	50		
01/27/89	WOLFE, DUYLOU LYNN	21 - OBSTIN	CA 89-54	50		
01/27/89	RAMOS, CARLOS	21 - OBSTIN	CA 89-54	50		
01/27/89	JACKSON, STEVEN MONTELL	21 - OBSTIN	CA 89-55	61		
01/31/89	DE LA MORA, JOSE TOMAS	21 - OBSTIN	CA 90-50429	60		
01/31/89	LIZABARRA, ALONSO RIOS	21 - OBSTIN	CA 90-50429	61		
01/31/89	CABO, RAMON ANGEL	21 - OBSTIN	CA 89-50311	50		
01/31/89	CABARES, ALMA GASTON	21 - OBSTIN	CA 89-50311	50		
01/31/89	MORA, EUGENIO	21 - OBSTIN	CA 89-50311	50		
01/31/89	CABARES, MONSIEUR	21 - OBSTIN	CA 89-50311	50		
02/01/89	LEMON, STEPHEN	21 - OBSTIN	CA 89-956	60		
02/01/89	COPEL, MADE PEBERICK	21 - OBSTIN	CA 89-956	50		
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02/01/89	JACKSON, JONN	21 - OBSTIN	CA 89-956(C)	50		
02/01/89	WOTO, JOSE GUARALUPE	21 - OBSTIN	CA 89-50314	61		
02/03/89	GARCIELA MATION	21 - OBSTIN	CA 89-50289	61		
02/03/89	PIEDRA-BIAS, ANABAD	21 - OBSTIN	CA 89-50444	60	036	36
02/03/89	MORA, JOEL	21 - OBSTIN	CA 89-50444	61		
02/03/89	RIO, OSCAR GUTIERREZ	21 - OBSTIN	CA 89-78	61	087	48
02/03/89	CEBILLO, FERNANDO	21 - OBSTIN	CA 89-123	50	012	72
02/03/89	ELKINS, LAWRENCE JAMES	21 - OBSTIN	CA 89-123	50	012	
02/03/89	WHITE, PAVANE	21 - OBSTIN	CA 89-123	50		
02/03/89	WHITE, KIMBERLY	21 - OBSTIN	CA 89-10576	50		
02/06/89	SAINT-CLAIR, BRAS	21 - OBSTIN	CA 89-84	61	040	60
02/07/89	EVERETT, TOMMIE	21 - OBSTIN	CA 89-143	50		
02/09/89	LEON, GUERRERO	21 - OBSTIN	CA 89-143	60		
02/09/89	LEON, RAMON	21 - OBSTIN	CA 89-10534	61	240	99
02/10/89	FERRER, ALFRED	21 - OBSTIN	CA 89-107	61	040	48
02/10/89	REYNOLDS, MARK BRIAN	21 - OBSTIN	CA 89-107	61		
02/10/89	DELLVILLAS, LUIS ALBERTO B.	21 - OBSTIN	CA 89-107	50		
02/10/89	FERRER, ALFRED	21 - OBSTIN	CA 92-53102	50		
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02/10/89	ANGEL, GABRIEL	21 - OBSTIN	CA 92-53102	50		
02/10/89	ANGEL, WILLIAM	21 - OBSTIN	CA 92-53102	50		
02/10/89	COMALIER, EUGEN	21 - OBSTIN	CA 92-53102	50		

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ALL CASES 10-024, 21-041, 21-046 FROM 1-1-00 TO PRESENT
: 21-041A1

[illegible]

DATE	NAME	CHARGE	COUNT NO	CRIM DISPOS	IMPRISON VRS	IMPRISON MO	PROBATION
03/13/89	GOMEZ, ALVARO DE JESUS	21 : 0841A1	CA 90-50239	SU			
03/14/89	GRISON, JARVIS JAMES	21 : 0841A1	CR 89-213	CT	070		48
03/14/89	THOMAS, ARTHUR	21 : 0841A1	CR 89-213	BM			
03/14/89	WILLIAMS, HERBERT JR	21 : 0841A1	CR 89-214	BM			
03/14/89	CORREIA, MARK EDWARD	21 : 0841A1	CR 89-214	CT			
03/15/89	ROBERTS, KERRAN EUGENE	21 : 0841A1	CR 89-225	BM			
03/15/89	WELSON, ELLIEN	21 : 0841A1	CA 90-50139	CT			
03/15/89	WILLIAMS, CLINTON	21 : 0841A1	CR 89-508	BM	360		99
03/15/89	RILEY, JOSHUA	21 : 0841A1	CR 89-226	BM			
03/15/89	FOSTER, BARRETT	21 : 0841A1	CR 89-226	BM			
03/15/89	RILEY, JOSHUA	21 : 0841A1	CR 89-227	CT	120		
03/15/89	RICO, BRIAN	21 : 0841A1	CR 89-227	CT	077		48
03/17/89	LOUPE, STANLEY	21 : 0841A1	CR 89-231	SU			
03/17/89	HARRIS, KEVIN	21 : 0841A1	CR 89-231	CT	024		
03/17/89	TOOKS, CHARLES DAVID	21 : 0841A1	CR 89-231	SU			
03/21/89	SHAW, JESSE	21 : 0841A1	CA 91-10427	SU			
03/21/89	WILSON, ANTHONY	21 : 0841A1	CA 91-10427	CT			
03/21/89	DICKERSON, JEROLD WAYNE	21 : 0841A1	CA 89-50381	CT			
03/21/89	VELEZ, ANNA MARIE	21 : 0841A1	CA 91-50188	SU			
03/24/89	GUILLEN, MAGDELENA ALVARO	21 : 0841A1	CA 91-50188	BM			
03/24/89	TAMCHER, JAVIER HINCAPIE	21 : 0841A1	CR 89-256	CT	215		60
03/24/89	GOMEZ, ALVARO DE JESUS	21 : 0841A1	CA 90-50239	CT	153		60
03/24/89	WANG, CHIM-CHIEN	21 : 0841A1	CR 89-293	SU			
03/31/89	WELSON, MARRY LEWIS	21 : 0841A1	CR 89-164	CT			
03/31/89	TOOKS, CHARLES DAVID	21 : 0841A1	CA 91-50427	CT			
03/31/89	NICKERSON, JAMES	21 : 0841A1	CA 90-50051	BM			
03/31/89	PURAT, ABAYATULLAH	21 : 0841A1	CA 90-50051	BM			
03/31/89	ENAJAV, RAD, ABASS	21 : 0841A1	CA 90-50051	BM			
03/31/89	LOPEZ-RETA, RAUL	21 : 0841A1	CA 89-50498	BM			
03/31/89	FERNANDEZ, EUGENIO	21 : 0841A1	CA 89-50498	BM			
03/31/89	RIMER, JOSEPH ALLEN	21 : 0841A1	CA 89-50498	BM			
04/04/89	DICKERSON, JEROLD WAYNE	21 : 0841A1	CA 91-50188	CT			
04/04/89	HEARDON, DENNIS EUGENE	21 : 0841A1	CA 91-50188	CT			
04/04/89	MORRIS, PRENTICE BEAN	21 : 0841A1	CA 91-50188	CT			
04/07/89	WAGLE, DWIGHT LYNN	21 : 0841A1	CA 89-50566	SU			
04/07/89	RAMOS, CARLOS	21 : 0841A1	CR 89-56	CT	060		60
04/07/89	WANG, CHIM-CHIEN	21 : 0841A1	CR 89-56	CT	060		60
04/07/89	COLERMAN, ELIZABETH	21 : 0841A1	CR 89-293	SU			
04/11/89	BISHOP, LEO	21 : 0841A1	CA 89-293	BM			
04/11/89	WEINER, DWIGHT	21 : 0841A1	CA 89-50560	SU			
04/14/89	ENAJAVIRAD, ABASS	21 : 0841A1	CA 90-50051	CT	136		60
04/14/89	ALVAREZ-GODOY, MARGARITA	21 : 0841A1	CA 89-50460	CT	121		48
04/14/89	PEREZ, POLINER	21 : 0841A1	89-709H	BM			
04/14/89	VILLA, WILARIO	21 : 0841A1	89-709H	BM			

DATE	NAME	CHARGE	COUNT NO	CRIM DISPOS	IMPRISON VRS	IMPRISON MO	PROBATION
04/14/89	HOUSTON, RAY	21 : 0841A1	CR 89-331	CT			
04/14/89	ROBINS, BARRETT	21 : 0841A1	CR 89-332	SU	121		60
04/14/89	JONES, KEVIN	21 : 0841A1	CR 89-332	SU			
04/14/89	ALVARADO, RICHARD	21 : 0841A1	CR 89-332	SU			
04/14/89	GREEN, RICHARD	21 : 0841A1	CR 89-332	SU			
04/17/89	REMOZA, SERGIO GUTIERREZ	21 : 0841A1	CR 89-359	SU			
04/17/89	TORG, RONALD	21 : 0841A1	CR 89-699	CT			
04/18/89	CIENTIA SALGUERO, JESUS	21 : 0841A1	CR 89-154	CT			
04/18/89	AGUIRRE, PRENTICE BEAN	21 : 0841A1	CA 89-50566	CT	240		99
04/18/89	PARRA-VILLA, ELIAZAR	21 : 0841A1	CA 89-50515	SU	240		60
04/18/89	GUTIERREZ, ENRIQUE	21 : 0841A1	CA 89-50515	SU			
04/20/89	MONTANA, OLIVIA MARIA	21 : 0841A1	89-749H	BM			
04/20/89	MONTANA, JAIME JR.	21 : 0841A1	89-749H	BM			
04/20/89	GASTELUM, ALVARO	21 : 0841A1	89-751H	OC			
04/21/89	WIGGINS, CHARLES EDWARD	21 : 0841A1	CA 89-50404	CT	083		60
04/21/89	KORANG, ALFRED ASHIE	21 : 0841A1	CR 89-293	MG			
04/21/89	RESTREPO, FLOO MARY	21 : 0841A1	CA 92-50483	CT	360		60
04/21/89	RESTREPO, LUI MARINA	21 : 0841A1	CA 92-50483	CT	320		99
04/21/89	RESTREPO, FADER ANTONIO	21 : 0841A1	CA 92-50483	CT	260		99
04/21/89	MONTANA, CARLOS ALBERO	21 : 0841A1	CA 92-50483	CT	228		60
04/21/89	MARTINEZ, CLAUDIO ROGEE	21 : 0841A1	CA 92-50483	CT	280		99
04/21/89	GARCIA, OLGA MARIANO	21 : 0841A1	CA 92-50483	CT	300		99
04/21/89	GARCIA, JAMETH MARIANO	21 : 0841A1	CA 92-50483	CT	300		99
04/21/89	CARMONA, JUAN	21 : 0841A1	CA 92-50483	CT	228		60
04/21/89	MONTANA, LOUIS FERNANDO	21 : 0841A1	CA 92-50483	CT	228		60
04/21/89	MALL, RANDY	21 : 0841A1	CR 89-380	SU			
04/25/89	FORTEVILLE, BOLLEN SCOTT	21 : 0841A1	CA 89-50510	CT	360		48
04/25/89	JACKINS, JEFF PHILIP	21 : 0841A1	CA 89-50510	CT	060		48
04/28/89	REMOZA, SERGIO GUTIERREZ	21 : 0841A1	CR 89-359	BM			
04/28/89	REMOZA, SERGIO GUTIERREZ	21 : 0841A1	CR 89-359	CT	121		60
05/01/89	MARRIS, DENNIS LEE	21 : 0841A1	CR 88-935	CT	100		48
05/01/89	ALVARAZ, JOSE LUIS	21 : 0841A1	CA 90-50249	SU			
05/01/89	ALVARAZ, JUAN POSADAS	21 : 0841A1	CA 90-50249	SU			
05/02/89	WHITE, BUTANE	21 : 0841A1	CR 89-123	BM			
05/02/89	PARRA-VILLA, ELIAZAR	21 : 0841A1	CA 89-50515	BM			
05/02/89	GUTIERREZ, ENRIQUE	21 : 0841A1	CA 89-50515	CT	188		60
05/05/89	MALL, RANDY	21 : 0841A1	CA 89-50716	CT	120		60
05/05/89	WASHINGTON, STANLEY	21 : 0841A1	CR 89-380	CT	240		90
05/05/89	BROWN, KEVIN	21 : 0841A1	89-799H	BM			
05/05/89	ANDERSON, JASPER	21 : 0841A1	CR 89-431	SU			
05/05/89	RUFENIT, DWIGHT	21 : 0841A1	CR 89-431	SU			
05/05/89	THOMPSON, EUGEN	21 : 0841A1	89-601H	OC			
05/05/89	NAMMONS, CATNY	21 : 0841A1	CA 90-50149	SU			
05/05/89	NAMMONS, BARBARA	21 : 0841A1	CA 90-50149	SU			

NAME	CHARGE	COURT NO	CRIM DISPOS	IMPRISON YES	IMPRISON MO	PROBATION
05/05/89 BENTLEY, JOHN	21 :0841A1	CA 90-50149				
05/05/89 BEAVERS, JULIUS	21 :0841A1	CR 89-424	SU			
05/05/89 GRAY, MICHAEL	21 :0841A1	CR 89-429	SU			
05/05/89 WILSON, MICKY	21 :0841A1	CR 89-429	SU			
05/05/89 BISHOP, KEVIN	21 :0841A1	CR 89-429	BM			
05/05/89 BISHOP, NATHAN	21 :0841A1	CA 89-50711	SU			
05/05/89 WASHINGTON, TRACY	21 :0841A1	CR 89-432	SU			
05/05/89 HALL, RANDY	21 :0841A1	CR 89-434	SU			
05/05/89 LUI, WING FOCK	21 :0841A1	CA 90-50273	SU			
05/05/89 SCOTT, MELARION	21 :0841A1	CA 89-50537	SU			
05/05/89 PEREZ, APOLINAR	21 :0841A1	CA 89-50541	CT			
05/05/89 PEREZ, APOLINAR	21 :0841A1	CA 89-50541	CT			
05/05/89 BARREJA, JOSE	21 :0841A1	CA 89-50541	BM			
05/05/89 FUMES, ARTURO	21 :0841A1	CA 89-50541	CT			
05/10/89 LARIE, ANDREW E.	21 :0841A1	CR 89-449	SU			
05/10/89 CALLEJON, LYNN	21 :0841A1	CR 89-449	SU			
05/12/89 GUIMONES, JOSE LUIS	21 :0841A1	CA 90-50249	CT			
05/12/89 PEREIRA, WILLIAM CARLOS AKA	21 :0841A1	CR 89-471	SU			
05/12/89 KANJANARASIT, SUREA	21 :0841A1	CR 89-471	SU			
05/16/89 HALL, RANDY	21 :0841A1	CR 89-470	SU			
05/16/89 CHUCKURAM, PHILLIP	21 :0841A1	CA 90-50273	SU			
05/16/89 PENEZ, BERTY	21 :0841A1	CA 91-50027	SU			
05/16/89 HOPE, ERIC SUDAN	21 :0841A1	CA 91-50027	SU			
05/16/89 BROWN, EMMIL LINCOLN	21 :0841A1	CR 91-834	SU			
05/17/89 BARNET, MARK CURTIS	21 :0841A1	CR 89-434	SU			
05/17/89 MARSHALL, BOBBIE	21 :0841A1	CR 89-495	SU			
05/17/89 MARSHALL, ANTHONY EARL	21 :0841A1	CR 89-495	SU			
05/18/89 PLASCENCIA-ACOSTA, GABRIEL	21 :0841A1	SACR 89-27	SU			
05/19/89 ANDERSON, JASPER	21 :0841A1	CR 89-431	SU			
05/19/89 HARRISON, CATIE	21 :0841A1	CA 90-50149	SU			
05/19/89 HARRISON, CATIE	21 :0841A1	CA 90-50149	CT			
05/19/89 HARRISON, BARBARA	21 :0841A1	CA 90-50149	CT			
05/19/89 BENTLEY, JOHN	21 :0841A1	CA 90-50149	CT			
05/19/89 GRAY, MICHAEL	21 :0841A1	CR 89-429	CT			
05/19/89 BISHOP, KEVIN	21 :0841A1	CA 89-50711	CT			
05/19/89 BISHOP, NATHAN	21 :0841A1	CR 89-432	CT			
05/19/89 THOMPSON, EULES	21 :0841A1	CR 89-434	CT			
05/19/89 WASHINGTON, TRACY	21 :0841A1	CR 89-434	BM			
05/19/89 WASHINGTON, STANLEY	21 :0841A1	CR 89-434	BM			
05/24/89 LUI, WING FOCK	21 :0841A1	CA 89-50537	CT			
05/24/89 LIZABARRA, EMMILIO	21 :0841A1	CR 89-5124	BM			
05/24/89 ACUIRRE, ADAM	21 :0841A1	CR 89-5124	BM			
05/30/89 CARUSO, JERRY	21 :0841A1	CR 89-161	CT			

NAME	CHARGE	COURT NO	CRIM DISPOS	IMPRISON YES	IMPRISON MO	PROBATION
05/30/89 GUIMONES, JOSE JUAN	21 :0841A1	CR 89-471	SU			
05/30/89 PEREIRA, WILLIAM CARLOS AKA	21 :0841A1	CA 91-50027	SU			
05/30/89 CHUCKURAM, PHILLIP	21 :0841A1	CA 91-50027	CT			
05/30/89 LAGO, OSITADINA	21 :0841A1	CA 91-50027	CT			
05/30/89 PENEZ, BERTY	21 :0841A1	CA 91-50027	MC			
05/30/89 SANTURUSQUE, TANARON	21 :0841A1	CR 89-499	SU			
06/02/89 VANG, CHIM-CHIN	21 :0841A1	CR 89-293	SU			
06/02/89 PLASCENCIA-ACOSTA, GABRIEL	21 :0841A1	SACR 89-27	CT			
06/05/89 MORALES, TONY	21 :0841A1	CR 89-544	SU			
06/05/89 MORALES, VIVIAN NANCY	21 :0841A1	CR 89-544	SU			
06/05/89 BAUTISTA, DIEGO TERESO	21 :0841A1	CR 89-518	SU			
06/05/89 CORTEZ, CARLOS	21 :0841A1	CA 89-50470	SU			
06/05/89 HENDON, KEVIN ANDRE	21 :0841A1	CA 90-50007	SU			
06/05/89 POE, SHANNON	21 :0841A1	CR 89-524	SU			
06/05/89 PER-LIA, FELIPE LACAYO	21 :0841A1	CA 89-50415	SU			
06/05/89 RODRIGUEZ, ANTONIO AVILA	21 :0841A1	CA 89-50415	SU			
06/05/89 JACKSON, THEOPHILIS EARL	21 :0841A1	CA 89-50571	SU			
06/05/89 SPREWELL, MORVELL LEE	21 :0841A1	CA 89-50571	SU			
06/05/89 BELLIDO, JOSE	21 :0841A1	CR 89-515	SU			
06/05/89 PIERA, EDGAR	21 :0841A1	CR 89-515	SU			
06/05/89 GONZALES, ELVIRA VASQUEZ	21 :0841A1	CR 89-515	SU			
06/05/89 TONG, MERRY	21 :0841A1	CR 89-512	SU			
06/05/89 JORDAN, KERRY LEE	21 :0841A1	CR 89-522	SU			
06/05/89 VASQUEZ, DANIEL	21 :0841A1	CR 89-523	SU			
06/05/89 WILES, GERRICK BARNELL	21 :0841A1	CR 89-523	SU			
06/05/89 VOTO, LORENZO	21 :0841A1	CR 89-524	BM			
06/05/89 REYES, GREGORIO	21 :0841A1	CR 89-513	SU			
06/05/89 VAN JERRAN, ARMANDO	21 :0841A1	CR 89-513	SU			
06/05/89 ALVARADO, ANTONIO RODRIGUEZ	21 :0841A1	CR 89-514	SU			
06/05/89 LEMAR, NECTOR ROLANDO	21 :0841A1	CR 89-514	SU			
06/05/89 FLORES, VANESSA MOELLES	21 :0841A1	CR 89-521	SU			
06/05/89 BARRIENTOS, JULIO	21 :0841A1	CR 89-521	BM			
06/05/89 DAVISON, SHELLE YVONNE	21 :0841A1	CR 89-524	SU			
06/05/89 SPANGLING, LOVELLA GEAR	21 :0841A1	CA 89-50408	CT			
06/05/89 SPANGLING, SAMUEL GEORGE	21 :0841A1	CA 89-50408	CT			
06/05/89 OLIVER, CLIFFORD	21 :0841A1	CR 89-169	CT			
06/05/89 ALVILLAZ, DANIEL	21 :0841A1	CR 89-169	CT			
06/05/89 BARNET, MARK CURTIS	21 :0841A1	CR 89-495	CT			
06/05/89 MARSHALL, BOBBIE	21 :0841A1	CR 89-495	CT			
06/05/89 MARSHALL, ANTHONY EARL	21 :0841A1	CR 89-495	CT			
06/05/89 SANTURUSQUE, TANARON	21 :0841A1	CR 89-495	CT			
06/13/89 BERNAL, VETIO	21 :0841A1	CR 89-499	CT			
06/13/89 GONZALES, ROBERT DE FATIMA	21 :0841A1	CR 89-499	CT			
06/13/89 CARRERA, PATRICIA DELCADO	21 :0841A1	CA 91-50257	CT			
06/16/89 SMITH, LAURENCE WARREN	21 :0841A1	CA 90-50594	CT			

DATE	NAME	CHARGE	COURT NO	CRIM DISPOS	IMPRISON YRS	IMPRISON MO	PROBATION
06/16/89	FILLMAN, LAURIE ANNE	21 : 08A1A1	CA 90-50596			151	60
06/16/89	BAUTISTA, DIEGO TERESO	21 : 08A1A1	CR 89-518			054	72
06/16/89	CORTER, CARLOS	21 : 08A1A1	CA 89-50470			057	72
06/16/89	HEWERN, KEVIN ANNE	21 : 08A1A1	CA 90-50007			120	96
06/16/89	POLK, SHANNON	21 : 08A1A1	CR 89-524			027	72
06/16/89	PERALTA, FELIPE LACAYO	21 : 08A1A1	CR 89-50415			060	48
06/16/89	RODRIGUEZ, ANTONIO AVILA	21 : 08A1A1	CA 89-50571			060	48
06/16/89	JACKSON, THEOPHOLIS EARL	21 : 08A1A1	CA 89-50571			151	99
06/16/89	SPREWELL, MORVELL LEE	21 : 08A1A1	CA 89-50571			168	99
06/16/89	BELLIDO, JOSE	21 : 08A1A1	CR 89-515			018	36
06/16/89	PIREDA, ENCAR	21 : 08A1A1	CR 89-515			018	36
06/16/89	COMALES, ELVIRA V. SOUTE	21 : 08A1A1	CR 89-515			060	84
06/16/89	TRUC, HENRY	21 : 08A1A1	CR 89-512			072	72
06/16/89	JORDAN, KERRY LEE	21 : 08A1A1	CR 89-522			034	72
06/16/89	VASQUEZ, DANIEL	21 : 08A1A1	CR 89-522			031	72
06/16/89	SOTO, LORENZO	21 : 08A1A1	CR 89-514				
06/16/89	REYES, GREGORIO	21 : 08A1A1	CR 89-521			034	03
06/16/89	SAN JERMAN, ARMANDO	21 : 08A1A1	CR 89-521			018	02
06/16/89	ALVARADO, ANTONIO RODRIGUEZ	21 : 08A1A1	CR 89-514				
06/16/89	LIMARES, MECTION BOLAND	21 : 08A1A1	CR 89-521				
06/16/89	FLORES, VANESSA MODELLIS	21 : 08A1A1	CR 89-528				
06/20/89	DAVIDSON, SHERLENE YVONNE	21 : 08A1A1	CR 89-544				
06/23/89	MORALES, TOMY	21 : 08A1A1	CR 89-544				
06/23/89	MORALES, YVONNE MARCY	21 : 08A1A1	CR 89-544				
06/27/89	MELJUM, HARRY LEVIS	21 : 08A1A1	CA 89-50578				
06/27/89	BLISHOP, L. J.	21 : 08A1A1	CA 89-50540				
06/27/89	BRIGGS, GILGORY	21 : 08A1A1	CA 89-50540				
06/27/89	WEISBER, DWIGHT	21 : 08A1A1	CA 89-50540				
06/27/89	HOUSTON, MARY ANN	21 : 08A1A1	CA 89-50148				
06/27/89	MOORE, ELIZABETH L.	21 : 08A1A1	CA 89-50148				
06/30/89	SILVER, LARRY B	21 : 08A1A1	CA 89-50187				
06/30/89	ANDERSON, JASPER	21 : 08A1A1	CR 89-431				
06/30/89	RUSAO, RICHARD LAWRENCE	21 : 08A1A1	CA 90-50476				
07/07/89	WITCHERSON, MARK EDWARD	21 : 08A1A1	CA 89-50443				
07/07/89	SPECK, JOHN ANDREW	21 : 08A1A1	CA 89-50443				
07/07/89	MCNARDIFF, CARLOS ERACLIO	21 : 08A1A1	CA 89-50443				
07/07/89	NABALIN, MUSA I.	21 : 08A1A1	CA 89-50443				
07/11/89	TORRES, MARY BERNA	21 : 08A1A1	CA 89-50443				
07/11/89	MART, BILLY NEAL	21 : 08A1A1	CR 89-420				
07/11/89	JONES, MARCEL	21 : 08A1A1	CR 89-427				
07/13/89	RODRIGUEZ, ANTONIO	21 : 08A1A1	CR 89-427				
07/13/89	LARA, RUPERTO MARCEAL	21 : 08A1A1	CA 90-50057				
07/14/89	LAASE, ANDREW E.	21 : 08A1A1	CR 89-449				
07/14/89	CALDERON, LYNDOL	21 : 08A1A1	CR 89-449				
07/14/89	RILLO, KARL ARTHONY	21 : 08A1A1	CA 90-50001				

DATE	NAME	CHARGE	COURT NO	CRIM DISPOS	IMPRISON YRS	IMPRISON MO	PROBATION
07/14/89	MART, BARRIN ERIC	21 : 08A1A1	CA 90-50001			110	40
07/14/89	HERRERA, JUAN ROBERTO	21 : 08A1A1	CR 89-401				
07/17/89	NATLOCK, JAMES H	21 : 08A1A1	CR 89-634				
07/18/89	JOHNSON, ADNER	21 : 08A1A1	CR 89-614				
07/18/89	PARIAGUA, CARRERA S.	21 : 08A1A1	CR 89-614				
07/18/89	MARIN, MARIA	21 : 08A1A1	CA 90-50213			204	60
07/18/89	VALENCIA, JULIAN	21 : 08A1A1	CA 90-50213			188	60
07/18/89	BORRA, LUIS ALFREDO AVILA	21 : 08A1A1	CA 90-50213			151	60
07/18/89	ORRADO-VALENCIA, HUMBERTO J.	21 : 08A1A1	CA 90-50187				
07/18/89	SUAREZ, LUIS	21 : 08A1A1	CA 90-50187				
07/18/89	BARBANS, SILVIO	21 : 08A1A1	CA 90-50387			168	60
07/18/89	CASASUS, ROBERTO	21 : 08A1A1	CA 90-50387				
07/18/89	PARIAGUA, BARBARA S.	21 : 08A1A1	CA 90-50387				
07/20/89	MARTIN, MARIA	21 : 08A1A1	CA 90-50387			188	60
07/20/89	MARCINS, LINDA	21 : 08A1A1	CA 90-50387			121	60
07/20/89	BLONSHA, MERRAN LIL	21 : 08A1A1	CA 91-55582				
07/21/89	QUINONES, JOSE JUAN	21 : 08A1A1	CA 91-55582			151	04
07/21/89	PEREIRA, WILLIAM CARLOS ARA	21 : 08A1A1	CR 89-471				
07/21/89	TORRES, MARY BERNA	21 : 08A1A1	CR 89-471				
07/21/89	MART, BILLY NEAL	21 : 08A1A1	CR 89-420				
07/21/89	JONES, MARCEL	21 : 08A1A1	CR 89-427				
07/25/89	RODRIGUEZ, ANTONIO	21 : 08A1A1	CR 89-427			168	99
07/25/89	LARA, RUPERTO MARCEAL	21 : 08A1A1	CA 90-50057				
07/25/89	MAYNES, MARVIN RAY	21 : 08A1A1	CA 90-50057				
07/25/89	ROBINS, BARRELL	21 : 08A1A1	CR 89-441			070	04
07/25/89	JONES, KEVIN	21 : 08A1A1	CR 89-332			262	60
07/25/89	GREEN, RICHARD	21 : 08A1A1	CR 89-332				
07/27/89	LOPEZ, "ERRO"	21 : 08A1A1	CR 89-332				
07/28/89	MARTIN, DANIEL WARNER	21 : 08A1A1	CA 90-50035			060	60
07/28/89	NATLOCK, JAMES H	21 : 08A1A1	CR 89-634				
07/31/89	JIMENEZ-CASTILLO, JORGE	21 : 08A1A1	SACR 89-35				
07/31/89	CONA-SALVEZ, LEONARDO	21 : 08A1A1	SACR 89-35				
07/31/89	OCMOA-SANCHEZ, LUIS	21 : 08A1A1	SACR 89-35				
07/31/89	RUIZ, GERMAN VALENTIN	21 : 08A1A1	SACR 89-34				
07/31/89	SANTABARBA, SILBERTO	21 : 08A1A1	SACR 89-34				
08/01/89	MARCINS, LINDA	21 : 08A1A1	CA 91-55582			120	60
08/03/89	BLONSHA, MERRAN LIL	21 : 08A1A1	CA 91-55582			120	60
08/03/89	VILLABONA-ALVARADO, MARIO E	21 : 08A1A1	CA 90-50491			365	60
08/03/89	BENNETT, BRIAN	21 : 08A1A1	CA 90-50491			365	60
08/03/89	MARTINEZ, LUI JAMETH	21 : 08A1A1	CA 90-50491			255	60
08/03/89	MARTINEZ, LUI JAMETH	21 : 08A1A1	CA 90-50491				
08/03/89	WASHINGTON, JIMMY	21 : 08A1A1	CA 90-50491				
08/03/89	RECCARVER, MICHAEL SUBARRY	21 : 08A1A1	CA 90-50491			240	60
08/03/89	MCCARVER, MICHAEL SUBARRY	21 : 08A1A1	CA 90-50491				

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CR92-336-CBM

UNITED STATES OF AMERICA, *Plaintiff.*

y.

SHELTON AUNTWAN MARTIN, ET.AL., *Defendant.*

DEFENDANT'S OPPOSITION TO GOVERNMENT'S
MOTION FOR RECONSIDERATION OF ORDER FOR
DISCOVERY RE: SELECTIVE PROSECUTION;
DECLARATIONS OF MARLA BELLER AND
COUNSEL

Hearing Date: Oct. 19, 1992

Hearing Time: 1:30 p.m.

Defendant, SHELTON AUNTWAN MARTIN, by and through his attorney of record, Deputy Federal Public Defender, Barbara E. O'Connor, hereby opposes the Government's Motion for Reconsideration of Order for Discovery Re: Selective Prosecution. This opposition is based upon the attached Memorandum of Points and Authorities, declarations of Marla Beller and Barbara E. O'Connor, the motion for discovery previously submitted, and all files and records in this case.

Respectfully submitted,

PETER M. HORSTMAN
Federal Public Defender

DATE	NAME	CASE NAME	COURT NO	CRIM	DISPOS	IMPRISON	FES	IMPRISON	MO	PERMISSION
06/03/89	HARRIS, MICHAEL	21 : 06A1A1	CA 90-50491	61						
06/03/89	HARRIS, MICHAEL	21 : 06A1A1	CA 90-50491	61						
06/03/89	MCCARTY, STEPHEN DAVID	21 : 06A1A1	CA 90-50491	61					235	60
06/03/89	CHULITZA, LORENZO	21 : 06A1A1	SACB 89-37	61						
06/03/89	LUT, JAMES DOUGLAS	21 : 06A1A1	SACB 89-37	61						
06/03/89	BARNELL, RICHARD	21 : 06A1A1	SACB 89-37	61						
06/03/89	LAMBE, THOMAS	21 : 06A1A1	SACB 89-40	61						
06/04/89	NARSMAL, ANA ESTHER	21 : 06A1A1	SACB 89-40	61						
06/04/89	LOPEZ, JOSEPH	21 : 06A1A1	CA 90-5016	61						
06/11/89	STICELIN, GLENN WILLIAM	21 : 06A1A1	CA 90-50035	61						
06/11/89	YONAS, JOHN ELLIOTT	21 : 06A1A1	SACB 89-34	61					078	60
06/11/89	JONESZ-CASTILLO, JOSE	21 : 06A1A1	SACB 89-34	61					034	48
06/11/89	GOMEZ SALVEZ, LEONARDO	21 : 06A1A1	SACB 89-35	61					046	48
06/11/89	OCEDA SANCHEZ, LOIS	21 : 06A1A1	SACB 89-35	61						
06/11/89	BULL, GERMAN VALENTIN	21 : 06A1A1	SACB 89-35	61						
06/11/89	SANTANARIA, GILBERTO	21 : 06A1A1	SACB 89-34	61						
06/11/89	FOOT, ANGEL MARIA	21 : 06A1A1	SACB 89-34	61						
06/11/89	RODRIGUEZ, JOSE GARCIA	21 : 06A1A1	CB 89-729	61						
06/11/89	RODRIGUEZ, ALVIN ALFREDO	21 : 06A1A1	CB 89-729	61						
06/11/89	AREND, DON MILTON	21 : 06A1A1	CB 89-729	61						
06/11/89	JOHNSON, OLIVER MATTHEW	21 : 06A1A1	CB 89-679	61						
06/11/89	BILAL, AHMAD ROBERT	21 : 06A1A1	CA 91-50260	61						
06/11/89	SMITH, A. ANDER LEON	21 : 06A1A1	CA 91-50260	61						
06/11/89	SMITH, VICTOR EDWARD	21 : 06A1A1	CA 91-50260	61						
06/11/89	BOON, CORTIS LEE	21 : 06A1A1	CA 91-50260	61						
06/16/89	SANCHEZ, RAFAEL	21 : 06A1A1	CB 89-704	61						36
06/17/89	KEMPTON, DAVID LEE	21 : 06A1A1	CB 89-704	61						
06/18/89	CHOW, DAVID	21 : 06A1A1	CB 89-231	61						
06/18/89	HARRIS, KEVIN	21 : 06A1A1	CB 89-231	61						
06/18/89	MAEY, JOSEPH	21 : 06A1A1	CA 90-5016	61						36
06/22/89	TOGO, DONALD	21 : 06A1A1	CB 89-499	61						48
06/22/89	GONZALEZ, MARTHA	21 : 06A1A1	SACB 89-41	61						60
06/22/89	ALMEIDA, ANTONIO	21 : 06A1A1	SACB 89-41	61						
06/22/89	BARNIERZ, ANTONIO R.	21 : 06A1A1	SACB 89-41	61						
06/22/89	CHULITZA, LORENZO	21 : 06A1A1	SACB 89-37	61						
06/22/89	LUT, JAMES DOUGLAS	21 : 06A1A1	SACB 89-37	61						
06/22/89	BARNELL, RICHARD	21 : 06A1A1	SACB 89-4C	61						
06/22/89	LAMBE, THOMAS	21 : 06A1A1	SACB 89-40	61						36
06/22/89	LUT, RAHEL	21 : 06A1A1	SACB 89-39	61						
06/22/89	PRIOS, OSCAR ALFREDO	21 : 06A1A1	SACB 89-39	61						
06/22/89	LAGALDE, EDWARD	21 : 06A1A1	SACB 89-38	61						
06/22/89	RODRIGUEZ, HECTOR	21 : 06A1A1	SACB 89-38	61						
06/22/89	UNAM, DENSON ALONSO	21 : 06A1A1	SACB 89-38	61						
06/23/89	BAUM, TERRY LEE	21 : 06A1A1	CB 89-734	61						48

DATED: October 5, 1992 By
 BARBARA E. O'CONNOR
 Deputy Federal Public
 Defender

DECLARATION OF BARBARA E. O'CONNOR

I, BARBARA E. O'CONNOR, hereby state and declare
 as follows:

1. I am a Deputy Federal Public Defender in the Central District of California appointed to represent SHELTON AUNTWAN MARTIN in the above-entitled action.

2. On September 30, 1992, I spoke with Chris Fernandez, an intake coordinator at Impact House, Pasadena, California.

3. Mr. Fernandez advised me that it was his experience in dealing with the treatment of cocaine base addiction, that there are an equal number of caucasian users and dealers to minority users and dealers.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: October 5, 1992

BARBARA E. O'CONNOR
 Deputy Federal Public
 Defender

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

Case No. CR-92-

UNITED STATES OF AMERICA, *Plaintiff*,

v.

CHRISTOPHER ARMSTRONG, *Defendant*.

JOINDER IN SELECTIVE ENFORCEMENT
 DISCOVERY MOTION; SUPPLEMENTAL
 DECLARATION BY DAVID R. REED

TO ASSISTANT UNITED STATES ATTORNEY,
 LAWRENCE CHO, AND TO THE CLERK OF THE
 ABOVE-ENTITLED COURT:

CHRISTOPHER ARMSTRONG hereby joins in all selective enforcement discovery motions previously filed by co-counsel in the above-entitled matter

Dated: 11/9/91

David R. Reed
 for Mr. ARMSTRONG

DECLARATION OF DAVID R. REED

I, DAVID R. REED, DECLARE AS FOLLOWS:

1) I am the court-appointed counsel for the defendant CHRISTOPHER ARMSTRONG, in the above-entitled matter.

2) I am one of the most active court-appointed attorneys on the Federal Indigent Bar Panel. Most of my practice for the past five years has been devoted to representing indigent defendants in our U.S. District Court, Central District of California (Central District.)

3) As a result of devoting most of my professional career to representing indigent defendants in the Central District, I have handled approximately fifty court appointed cases per year over the past five years (most of these are negotiated cases, not trials.)

4) As a result of spending most of my waking hours in and about the U.S. Courthouse and MDC, I have had many opportunities to not only handle many felony drug cases within the Central District, but, to speak to many other criminal defense lawyers and Assistant United States Attorneys on a daily basis about the nature of their criminal cases within our Central District.

5) As I search my memory, I do not recall ever handling a rock cocaine case involving non-black defendants. Further, on information and belief, I have never even heard of a rock cocaine case prosecuted within our Central District that did not involve black defendants.

8) I have personally handled the following cases, USA vs: (a) ANTONIO JOHNSON CR-92-105-HLH, (b) PATRICK JOHNSON CR-90-497-WDK, (c) ERIC BOBBITT, CR-90-582-RG, (d) ANDRE MANNING, CR-90-624 WMB and CR-90-512 DT, (e) NORVELL SPREWELL, CR-89-519-LEW, and (f) EDGAR ALLEN POPE CR-90-574-CBM (a case the court may remember.)

These prosecutions were all rock cocaine cases and all involved black defendants.

7) I am on the Board of Directors of the Criminal Courts Bar Association Indigent Defense Panel, the association of criminal defense lawyers devoted to representing indigent defendants charged with state crimes within the Criminal Courts Building, 210 W Temple St., L.A. This association handles more state court criminal cases than any other association within Los Angeles County and is composed of over two hundred defense lawyers. As a result of being on this state panel, I do handle a few state criminal matters (not more than 10 cases/year however), but, I talk to many state court judges, prosecutors, and defense attorneys in carrying out my duties as a Director of the Organization. There are many crack cocaine sales cases prosecuted in state court that **do** involve racial groups other than blacks. A major percentage of sales of crack cocaine cases are prosecuted against **Latinos** in the state courts. Yet, in my many discussions with judges and lawyers in the state court, I have never seen any Latinos prosecuted for sales of crack cocaine in our federal court, even when many of these Latino defendants caught selling rock cocaine have already had numerous recent "priors" for selling narcotics and are still on probation. These state cases involving other racial groups are simply not brought over to our federal court.

I declare under penalty of perjury that the above is true and correct. Executed this 8th day of November, 1992, in L.A.

DAVID R. REED

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I have read the foregoing,

and know its contents.

☒ CHECK APPLICABLE PARAGRAPH

- ☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
- ☐ I am ☐ an Officer ☐ a partner ☐ a _____ of _____

a party to this action, and am authorized to make the verification for and on its behalf, and I make this verification for that reason ☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

- ☐ I am one of the attorneys for _____ a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.
- Executed on _____, 19____, at _____, California.
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Type or Print Name

Signature

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaints)

Received copy of document described as _____

on _____, 19____.

Type or Print Name

Signature

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of LOS ANGELES, State of California.I am over the age of 18 and not a party to the within action. My business address is: 8530 Wilshire Blvd. 404 Beverly Hills, Ca. 90069

On _____, 19____, I served the foregoing document described as _____

- ☐ _____ on DEFENDANT in this action
- ☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.
- ☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

Lawrence Cho
personal service 312 N Spring St

- ☐ (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at _____, California.

Executed on _____, 19____, at _____, California.

- ☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the office of the addressee.

Executed on _____, 19____, at _____, California.

- ☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

- ☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DAVID R. REED

Type or Print Name

Signature

PLAINTIFF'S EXHIBIT: THESE DOCUMENTS WERE RECEIVED FROM
THEY WERE RECEIVED BY THE COURT AND ARE NOT TO BE
FILED IN THE COURT'S RECORD OR IN THE PUBLIC RECORD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CR92-336-CBM
Los Angeles, California

UNITED STATES OF AMERICA, *Plaintiff,*

v.

CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE,
AARON HAMPTON, FREDDIE MACK AND SHELTON
AUNTWAN MARTIN, *Defendants.*

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE CONSUELO B.
MARSHALL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:
LOURDES G. BAIRD, ESQ.
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Attorney
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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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Los Angeles, California
90012

Transcriber:
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Echo Reporting
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San Diego, California
92122
(619) 453-3325

LOS ANGELES, CALIFORNIA,
SEPTEMBER 8, 1992, 8:27 A.M.

(Call to order of the Court).

MR. CHO: Good morning, your Honor, Lawrence Cho on behalf of the United States. With me at Counsel table is Detective Mark Campbell.

MS. O'CONNOR: Good morning, your Honor, Barbara O'Connor, appearing on behalf of Shelton Martin who is also present in court.

MR. LANNEN: Good morning, your Honor, Timothy Lannen, appearing on behalf of Aaron Hampton who is present in custody.

MR. WALSH: Good morning, your Honor, Joseph Walsh on behalf of Robert Rozelle, who is present.

MR. JOHNSON: Good morning, your Honor, Phil Johnson representing Mr. Christopher Armstrong on behalf of Julie Ireland, who is not here this morning.

THE COURT: Good morning. The matter that is before the Court this morning is a motion—motion for discovery, or in the alternative to dismiss for selective prosecution and also there is a bail review for Mr. Armstrong, and we do have a representative from pretrial present. Can I have you state your name for the record, please?

MS. REEDER: Good morning, your Honor, Jill Reeder for pretrial services.

THE COURT: Thank you. I think we will go with the motion first, but let me inquire—the last filing that I have on this motion is the Government's opposition that was filed on August the 11th—anything filed since that time? There are joinders, but I'm not referring to those, actually—

MS. O'CONNOR: Nothing beyond the joinders, your Honor.

THE COURT: No reply.

Now, in the Government's opposition they cite—I guess at the time—the most recent Ninth Circuit case in this area that talks both about the burden or showing that the defendant must make in order to even get the discovery that's requested, as well as the standard to be used for purposes of the dismissal. And I—maybe Defense could just respond to that case, and does this case meet that standard, et cetera. And whether or not there is—has been another case decided—or other cases decided since that one. Defense?

MS. O'CONNOR: Your Honor, not that I am aware of, but as far as the *Bourgeois* case, our position is that it's certainly a different factual scenario. Where the police in *Bourgeois* were focused on a specific gang for a short period of time, and I think in the quotation that the Government includes, the court holds the Government need not provide discovery on selective prosecution simply because law enforcement focuses for a short time on a racially homogeneous group—namely the targeting of one gang to the exclusion of other equally culpable gangs.

In this case, what we would argue is that the focus is on one race, it is not on one specific gang for a short period of time, and I think the evidence that we did present in terms of the Federal Public Defender's office's experience, over the course of 1991, indicates that the Defendants brought over here for prosecution in Federal Court are exclusively black—

THE COURT: These cases were filed between the time period of 1989 and I think through 1991, and of course this case was indicted in 1992, is that Counsel's position?

MS. O'CONNOR: That's correct, your Honor, and I do not have the information over the course of 1992 that I had opened to present to the Court, and I had also hoped to have some state information which we have had difficulty obtaining—which actually impacts our request for discovery, because it is considerably more difficult for us to obtain information from law enforcement, and statistics that we believe must be available simply by the nature of the U.S. attorney's office prosecution. There must be statistics, there must be policies—Officer Campbell worked in the neighborhood that is concerned here and obviously all of these defendants are black.

THE COURT: And the Defendant is focusing on those that have been charged with drug offenses?

MS. O'CONNOR: That's correct, your Honor, and specifically as to Mr. Martin, we would—what we're seeking is to know the policy that results in an individual like Mr. Martin being brought over from the state for Federal prosecution, namely an individual who does not have a prior drug sale arrest, which I think—it has been my experiences the typical justification that the U.S. attorney's office offers for bringing people over—these are repeat offenders, et cetera—it doesn't have anything to do with race.

Well, Mr. Martin does not fall into that category and it seems no reason to bring him here from state court other

than this sweep of black males in their twenties coming over here.

THE COURT: Anything else that you wish to place on the record concerning the motion?

MS. O'CONNOR: No, your Honor.

THE COURT: Okay.

MR. JOHNSON: Your Honor, may I be heard for a moment?

THE COURT: Certainly.

MR. JOHNSON: I concur with everything that Ms. O'Connor stated—I would just like to draw the Court's attention perhaps to the distinguishing facts between *Bourgeois* and the instant prosecution.

In *Bourgeois* the court found that the applicant's claim was too narrowly focused. He was the victim of a two-day gang sweep in that particular area.

The court reviewed the entire prosecution of the specific charge—with which the defendant was charged at that time—for a two-year period, and noted that the defendant in that case did not cite that the other 140 cases that he was similarly charged—that they were similarly charged with were in fact selective prosecution because he didn't even cite that any of those were black—black defendants versus white defendants. The court noted that he was only the object of a two-day sweep which apparently picked up everybody of one race in that particular time period.

On the facts—I think—this case could be distinguished because the court—I think—recognizes here that we have a range of data that goes over an entire period of a year, all involving the same kind of charge, and all—

THE COURT: You are referring to that information that's—or exhibit—that's attached to the—Ms. O'Connor's papers?

MR. JOHNSON: Yes—yes, your Honor.

And I think that *Bourgeois* would be easily distinguishable on that basis alone. In other words, the court went on

to say that the relevant inquiries, the history of prosecutions over a reasonable period of time—and what *Bourgeois* is talking about is a two-day sweep. The court by—I think—it said that this isn't long enough, and that perhaps on that basis alone the court's focus would be just on that and *Bourgeois* would not be heard to say that this present case would fall under that ambit. I just wanted to suggest that for the Court.

THE COURT: All right. Mr. Lannen?

MR. LANNEN: Yes, your Honor. I think that in addition—the question that comes up—that *Bourgeois* asks for is a showing—what we're missing—that is—is a showing of similarly situated non-black felons, and I think the point is—or the question is at what point does the burden switch to the Government to show that there is no policy. I think it's common knowledge—we all know as attorneys—that literally dozens of these cases everyday are filed in state court for street corner or even mid-level cocaine or crack selling.

And why is Mr. Hampton, for instance my client, who the Government even alleges in the indictment is a runner quotes—puts in quotes—that he is a runner, meaning a low level individual in a—in drug trafficking and who if were filed in state court could get a maximum of approximately ten years, of which he would serve five, why is he brought over to Federal court and the Government seeks a life term without possibility of early release.

That's the real question here—as to why some are brought over for the same offense—literally the same offense, this is a common trafficking offense, and brought into state court with—where the sentencing is so obviously unequal for the same conduct, and I think that by—and again, the question is—Ms. O'Connor in the public defender's office in showing that literally every case that they have handled, in the course of a year or more, is black, then what more can we do—or at what point should

the burden be put on the Government to answer the question of why individuals are being selected to be brought over to Federal prosecution for the same offense.

MR. WALSH: And your Honor, Robert Rozelle joins in the motion and just adopts the arguments that have been previously set forth. Thank you.

THE COURT: All right. Government's Counsel may respond.

MR. CHO: Your Honor, I don't have much more to add to the papers that I—that have been filed—unless the Court has any questions. I just want to respond very briefly that *Bourgeois*—the Court has read the opinion—the opinion is sweeping. The language is sweeping. It is certainly not a case that—I think it should be limited to the facts presented before it. In addition, I think that the facts before it are quite similar to the facts in this case and the language that was used, I think, is highly applicable. Other than that, your Honor, if the Court has any questions I'll be happy to answer them.

THE COURT: My impression in reading *Bourgeois* is that in that case the Government did offer some evidence to support or to—in contradiction to the allegations that were being made by the defendant. In this case now the Government hasn't offered any explanation at all as to why, based upon the statistical data that's been provided by Ms. O'Connor, that it does appear from looking—we have over 20 persons ranging from 1989 through 1992 if we include this case—being brought from state court to Federal court for these drug offenses, all of whom are black.

It's—as I said, my reading of *Bourgeois* would indicate that—in that case the Government did offer some explanation for why—in this case the Government offers no explanation. That's one difference that I see.

MR. CHO: With regards to an explanation, your Honor, I think in *Bourgeois* the elements are still—were still not—

quite lacking—I don't think *Bourgeois* was the situation where the defendants made—or the movants made even a prima facie showing or any kind of showing—the Government successfully rebutted that by introducing any sort of evidence or explanation.

Certainly the explanation in *Bourgeois* was noted and in this case, your Honor, there is no real explanation—I can't explain why the public defender's office has only encountered black defendants and crack cocaine cases—I would have no explanation for that. But certainly I can say that there is no racial motivation of any sort that I am aware of as to why we brought this case versus any others. Certainly I can also say, your Honor, that there is absolutely—I have absolutely no knowledge whatsoever concerning the Government's use or discriminatory intent in bringing those crack cocaine cases—or for that matter in bringing this one. Certainly I also haven't seen any evidence or any allegation even that the Government has acted unfairly or has prosecuted non-black defendants or failed to prosecute them—that is—declined to prosecute in the language of *Bourgeois*—prosecute—failed to prosecute similarly situated non-black defendants.

There is just no situation or no showing of that whatsoever and that has been the necessary element and requisite long before *Bourgeois* was established, that is—that's been case law and Ninth Circuit law for many, many years prior to the decision of *Bourgeois*.

Any other questions, your Honor?

THE COURT: No other questions.

MR. CHO: Thank you.

THE COURT: The Court would grant the motion—the discovery part of the motion—I think that the Defense has made adequate showing in this case that would require the Government to at least turn over policy statements and statistical data that's requested in the motion itself.

The Court sees it different than *Bourgeois*, in that in this case we do have something more than mere allegations.

Bourgeois was a mere allegation case. Also we have a time period that is quite a lot longer than in *Bourgeois* and as one Counsel said, *Bourgeois* focused on a particular gang without any statistics. I don't know this for a fact, but I assume that most of the members of that particular gang would have been of that same ethnic group, so therefore those who were arrested as a result of the investigation probably would have been the group.

In this case, we have a fairly general charge—one that we see regularly in this courthouse—and whether it's coincidental or not, that out of the group that the public defender—that Ms. O'Connor provides us information on—all of them happen to be of the same racial group.

I think the number is adequate that would at least require the Government to provide some explanation. The time period is such that would require some explanation. The charges are the same or similar, and the race is the same in each case.

The Court grants the discovery part of the motion, and does not rule at this point on the motion to dismiss. I assume what will happen is once the Government provides the statistical data then the Defense—if it deems appropriate—will then supplement the motion by providing the Court with more information.

Now, the question is how much time it's going to take the Government to collect the data. I'm not sure if the data has already been collected in this regard or if it's something that you have to start from the beginning.

MR. CHO: Your Honor, as I indicated at the last hearing there is no data collected or retained by the U.S. attorney's office with regards to the race of defendants or the types of offenses that certain races have been prosecuted for, versus having not been prosecuted for, and so I can make some inquiries—some additional inquiries and I will, of course, but to my knowledge at this point—in previous motions that have been filed of this nature in

other cases, we simply don't have that sort of data or collection of information with respect to certain prosecution of certain races and people.

THE COURT: I assume that one approach might be—and the Court can certainly give some guidance and make additional rulings if Government's Counsel requests—is that we could take a certain time period—there must be information, whether it's compiled or not, on how many people have been charged, how many cases have been transferred from state court to this court for a particular charge during a certain time period, and then the racial identity of those persons and any other background information that the Government would have that you might want to argue that it's clear that this isn't race-related, but it is based upon some other criteria, such prior convictions of a certain type, prior criminal records of a certain type. Age might be a factor. There might be other factors that are considered—and then on the other hand, maybe it's the Government's position that none of these factors are considered in making this determination—I don't know. But what I was indicating is that to the extent that we need to limit it to a certain time period, to certain charges, to cases that have been commenced in state court and then brought to this Court—we might only be talking about cases that were actually filed in state court and those—state charges were dismissed and then new charges—and then charges filed in the Federal court. So the Court can give some guidance in terms of what group we're talking about to give the Government a starting place and then you would probably be in a better position to indicate to the Court how long it would take just to compile the information.

I'm sure that their—that racial identity is disclosed somewhere in some of this information, so while you might not keep a record of race—broken down by race—I would assume that race is noted somewhere in the police

report or in some of the other information that's available to the Government.

But I would like to hear from the Defense now as to the group that we're talking about, so that the Government will know where to go in terms of looking for this data. What time period do we want to focus on—is it the period from 1989 through 1922? '89 was the earliest cases filed, in the information that was provided. Are they all cases that were actually filed in state court, charges then dismissed and refilings in Federal court, and the charges that we want to focus on. Are they just generally narcotics cases, or are they just cocaine base cases, some specifics.

MS. O'CONNOR: Your Honor, we would be particularly interested in the cocaine base cases which seem to engender what we perceive as this racial selectivity. I—in my motion—laid out the information that I thought would be helpful—useful to us and useful to the Court in determining if there was in fact a pattern of discrimination, and that would include—I think the most—perhaps the easiest way to analyze it would be to use the same time period that we have provided information for from the U.S. attorney's office, and I can indicate to the Court that what we did was use the paralegals to go through the case files and obtain this information on the racial identity of the defendants, the charges—the state charges and there seemed to be no other pattern than race in indicating why these people were brought over here instead of remaining in the state.

THE COURT: So the time period is 1989 to '92. The charge is cocaine based and the—they are all cases that were originally filed in state court and then subsequently refiled in Federal court?

MS. O'CONNOR: Yes, your Honor. And that would include also cases where individuals—and I have myself experienced this with clients—are arrested and kept in state court on a parole violation—done their period of time in

state court and then are brought over here for further prosecution.

THE COURT: Are you suggesting that no state charges were filed against those persons—

MS. O'CONNOR: No, your Honor, I am suggesting state charges were filed, but they were in the nature of parole revocation based on the arrest.

THE COURT: In other words, there were those cases where the charge that was filed here was not the same charge filed in state court—

MS. O'CONNOR: Correct, your Honor—

THE COURT:—some different charge was filed in state court and then the cases were charged as a drug violation.

MS. O'CONNOR: That's correct, your Honor. I believe that is not uncommon. It is the same transaction as the—provides the basis for the parole revocation but then is charged here as the drug offense.

THE COURT: Do any of the other Defense Counsel wish to be heard on what group we're talking about, so that the Government will know what to look for in trying to get this information?

MR. LANNEN: Well, I would agree with Ms. O'Connor on all of the criteria except maybe—thinking out loud—a lot of these cases—I would like it to include all arrests for that offense, not just filings in state court, because often—

THE COURT: When you say all arrests for that offense, what do you mean?

MR. LANNEN: Offense for cocaine and crack—for crack—

THE COURT: You mean where one is arrested by local police agencies—not charged in state court, but—

MR. LANNEN: See, in other words, your Honor, the—in this case I don't—I'm not even sure there was ever a filing in state court. I think that could become deceptive. They were just filed on over here in lieu of state court.

Now, I may be incorrect there. There may have first been a state filing—I'm not aware of one on my client, but—

THE COURT: So again, are you talking about persons who are arrested by the local police and then charged in Federal court for narcotics violations?

MR. LANNEN: Yes, your Honor, so—

THE COURT: Is that the group you're talking about?

MR. LANNEN:—that—because I don't believe that there's—I think in most cases when a case is filed in Federal court there is not first a filing in state court. In other words, they just file it over here. Do you understand? I don't know if I'm—

THE COURT: I understand what you're saying. That they are arrested by the local police—

MR. LANNEN: In this case, for instance—yeah—

THE COURT—for some narcotic violation—

MR. LANNEN: Right.

THE COURT:—and instead of being charged in state court are charged in Federal court, but the only charge being a narcotic violation. Is that the group that you're talking about?

Because if there were some other Federal violation, then it would seem to me that the answer would be that there was a Federal violation, and that's why it's being filed in Federal court. If it's a situation though where there is—

MR. LANNEN: Well, other than narcotics—no, I agree with the Court on that. In other words, right.

THE COURT: And then the group that I think we're talking about is not just any narcotics, but cocaine base?

MR. LANNEN: Cocaine base, yes, your Honor. I would agree with that.

THE COURT: So what you want to add to the group is that—

MR. LANNEN: That is not be—

THE COURT:—they are persons that were arrested by the local authorities on—for cocaine base and charges were filed in Federal court?

MR. LANNEN: Yes, your Honor. As the Court says—that I note—that in this case the Defendants were arrested both by Inglewood Police Department and the Alcohol Tobacco—which is a Federal agency—so I'm wondering if we should include cases in which they were both involved—both state and federal agencies were involved.

THE COURT: Anything further?

MS. O'CONNOR: I just wanted to add, your Honor, that in terms of ease of retrieving the data we began with the charge—cocaine base charges and went backwards from that. I know for example in this case that Officer Campbell and the ATF agent, Jeffrey Cochran have been involved in at least three other cases defendant—black defendants that were brought here to Federal court on cocaine base, so it seems to me the agencies certainly are—have access to one another's data, and in terms—starting from the cocaine base would be easy to track what the defendants are in terms of their race.

THE COURT: Could you comment on whether or not in this case it's your belief, based upon the information that you have obtained—as to whether or not charges were first filed in state court and then charges subsequently filed here. Mr. Lannen thinks that maybe that did not occur—at least as far as his client.

MS. O'CONNOR: I believe he's correct, your Honor.

THE COURT: How about for your client? Were charges—

MS. O'CONNOR: I believe that was also the case.

THE COURT: Charges were not filed in state court first?

MS. O'CONNOR: That's correct, your Honor, although that could have been the case because Officer Campbell

was involved—it could easily have stayed in Inglewood, rather than coming here—and the other cases that I'm mentioning, all of the defendants were brought into Inglewood police—one was kept then in County Jail for two weeks, and then brought over here, and seemingly for no reason.

THE COURT: When you say "for no reason" you mean—

MS. O'CONNOR: Well, certainly there is jurisdiction, your Honor, but what we are wondering is why these individuals and not others.

THE COURT: Anybody—and of the other Defense Counsel wish to comment now on the group that we're talking about?

MR. WALSH: Just as to Robert Rozelle—I don't believe state charges were filed in his case either. I think he was arrested and brought directly to Federal court.

THE COURT: Government's Counsel maybe can respond. Were state charges filed against any of these defendants?

MR. CHO: Your Honor, state charges were never filed in these defendants. As in a lot of these other cocaine base cases that the Court has carved out, oftentimes state charges are never brought—a lot of these cases involving—specifically involving Inspector—Detective Campbell and Inglewood—are part of a joint task force that is a federal and state task force between local police departments and the alcohol—Bureau of Alcohol, Tobacco and Firearms. These are Federal violations—they are part of the investigations into Federal narcotics violations, as well as Federal firearms violations, and that has been the case in this—in the case at bar there have been violations of 924(c) as well as Title 21, § 841(a)(1). With respect—

THE COURT: Were each of these defendants charged with the narcotics violation—I mean narcotics violations, yes.

MR. CHO: Yes. Each of the defendants was charged at least with the conspiracy and with the—with substantive counts and I believe with respect to Defendants Armstrong, Rozelle, Hampton and—actually, all of the Defendants present in this Court are all charged with the Federal gun counts as well. The 924(c) counts—that's the use of a firearm in connection with a narcotics trafficking offense, as was in—well, *Bourgeois* was an ATF case also, local—joint case in which they were going after felons in possession of firearms—it was still a Federal firearms violation.

THE COURT: Anything else that you wish to place on the record in terms of trying to identify the group?

MR. CHO: I do need a bit more clarification, your Honor, so—we have ascertained that the group is cocaine base offenders between the periods of 1989 to 1992, and I'm not quite sure—the Court wants the Government to turn over whether or not the defendants in those cases—or the cases that we've brought federally were black? Is that—that's about all I can get out of it.

THE COURT: No, I think the question was—the question is what was the racial identity or what is the racial identity of all of those persons.

What we are really interested in finding out here—are they all black? The Defendants believe that they are. The Government might produce evidence to show that they're not—that they are a mixed group. So it's not just if they're black, but what is the racial identification of people that fall into the category—and I'm going to define the category a little bit more before we complete the hearing this morning.

But first, if there is anything else—any other question that you're concerned about, or anything else that you want to place on the record, just concerning the group identification—because we started this when I inquired as to how much time you would need to collect the data. I

would assume the larger the group the more time that you need, so once we narrow it to a specific group of people—and you might not be able to tell me today how much time, but within a couple of days I would expect you to be able to tell me how much time it's going to take to collect the information.

MR. CHO: Well, at this point it's certainly just the racial identities of defendants in which the Government has charged cocaine base violations?

THE COURT: I'm going to identify the group—

MR. CHO: Okay.

THE COURT:—a little bit more specifically than I did earlier.

Let me ask Ms. O'Connor. Apparently your office is actually keeping records on the racial identity, is that correct?

MS. O'CONNOR: That's correct, your Honor.

THE COURT: How long did it take to do the initial research—to develop the information that you provided to the Court?

MS. O'CONNOR: I don't believe—

THE COURT: You indicated that you used paralegals and you think what they did was to look through all of the files that you had in your office, identified the charge, the racial group, the time period, et cetera.

MS. O'CONNOR: I believe it took a period of several weeks to do the initial calculation, and there were three paralegals working on it, although they were not working full-time on it.

THE COURT: Now, I raised the question about how long it's going to take because we—our present trial date is October 6th?

MS. O'CONNOR: That's right, your Honor.

THE COURT: And at least one of the Defendants—I think it's Mr. Armstrong who has a bail motion in his papers suggests to the Court—well, this case has been continued and he's been detained for a number of months.

I don't recall specifically now at whose request the case each time was continued and one of you can probably refresh my recollection about that—but this certainly is a request being made by the Defendants—Mr. Armstrong has joined in this motion—obviously it's going to take some time for the Government to obtain the information and then once the information is provided to you then you're going to have to supplement the motions that are before the Court. You have to put it on for hearing—it probably means that we will not be able to keep the October 6th date. I'm not going to continue the trial at this point because, you know, maybe the data won't indicate anything to us but certainly there is a possibility that this case might be continued again and if so this is at the request of the Defense. Each of you having joined in this motion.

And as I said, it's going to take time to collect the data and time to—for you to supplement the motion, for the Court to hear the motion and issue a ruling and that probably means a new trial date. So I just want you to keep that in mind—it's something to think about in terms of—for your individual clients whether or not you feel that this type of information is going to be beneficial or aid you in supplementing the motion that has been made.

Ms. O'Connor, maybe you can tell me if you recall or Government's Counsel can address it as well. How many continuances have there been in this case, and have there—all of them been at the request of the Government or have some been at the request of the Defendants?

MS. O'CONNOR: My recollection—and unfortunately I don't have the initial date here, was that we had initially asked for a continuance but the later continuance was asked for by the Government due to the illness of the informant.

THE COURT: How about Government's Counsel? Do you recall how many continuances there have been, and

whether or not those were joint continuance—stipulated continuances or requested by one or the other side?

MR. CHO: All of the continuances have been by stipulation, your Honor. Certainly I think some of the requests—I think it's fairly evenly split up. If I recall one of them was because Defendant—I think it was Rozelle—had been arrested. It was either Rozelle or Martin was arrested and there was a continuance based on that for additional time. The last continuance was because of Government's confidential informant—but also another reason was because Defendant Rozelle had just been arrested and he would need additional time because trial was set, I believe, three weeks from the date of his arrest at that time.

The first continuance may have been because of the arrest of Defendant Martin. If the Court will recall, initially the Government indicted the case—two arrests were made. Defendant Armstrong and Hampton were arrested at the scene and subsequently Defendant Martin was arrested which he needed a continuance for, and then just—the last Defendant was Defendant Rozelle who was arrested and of course a continuance was necessitated by that.

There were also motions—if I recall—motions to compel discovery which were filed beforehand—oh, I just now remembered also—there was a change of counsel for Defendant Armstrong, which also necessitated additional time for their new counsel.

THE COURT: All right, anything else that you wish to place on the record concerning this motion?

MS. O'CONNOR: Nothing—nothing further, your Honor, other than to ask that the Court clarify what items that we had asked for in the motion will be granted.

THE COURT: I was granting the motion as to all of the items that were requested. It's all just statistical data. But as far as the group is concerned, the Court would order Government's Counsel to supply this information as to

those persons who have been indicted by the Government on cocaine base and a Federal firearms violation, and it's their racial identity that the Court is ordering be disclosed.

The time period—1989 through 1992, and specifically cases in which both state and federal law enforcement officers have been involved, whether it be a case where just state law enforcement was involved with no federal officers being involved or there being a joint state and federal.

If the—it isn't clear from the request—what the Court wants to know is whether or not there is any criteria in deciding which of these cases will be filed in state court versus Federal court and if so, what is that criteria.

That is the problem I think that needs to be addressed, because we do see a lot of the cases and one does ask why some are in state court and some are being prosecuted in Federal court, and if it's not based on race what's it based on? What is the criteria. It could be based on things like prior convictions. It could be because there are federal firearms charges involved—there could be various reasons for it, but I think ultimately that is the question that needs to be answered is what is the criteria—is there any criteria and if there is, what is that criteria?

MR. CHO: Your Honor, when you say the group consists of cocaine base and firearms violations cases—do you mean cases where we brought both counts—both of those charges against those defendants, right?

THE COURT: Yes.

MR. CHO: Okay.

THE COURT: And I would—since I don't know how long it's going to take the Government to obtain the information—if you have those statistics, Ms. O'Connor has indicated for their office they had three paralegals working on it, although not on a full-time basis. She says over a period of several weeks.

I think what I would do is place it back on for a status conference within a week or so and ask at that point that

the Government be able to advise the Court as to how long it's going to take to obtain the information.

Ms. O'Connor.

MS. O'CONNOR: Your Honor, could I just also clarify that we're looking for not only the cases involving cocaine base and firearms, but if they are solely cocaine base as well.

THE COURT: Yes, you—the record reflects your statement. Yes?

MR. CHO: Nothing.

THE COURT: Okay. Anything else?

MR. CHO: One additional matter, your Honor.

THE COURT: Yes.

MR. CHO: The Government requests an opportunity to brief the appropriateness and the case law involving the inquiry into the criteria for the prosecution to be brought. I understand—if I recall, there are certain cases—Ninth Circuit decisions out there that have touched on the issue of whether or not an inquiry into the purposes behind whether certain cases are brought or not is appropriate.

The Government would like to have an opportunity to look up those cases and supply those to the Court.

THE COURT: I'll permit you to provide the Court with some information on it. What I'm going to do is continue it for a status conference, but even though you might file additional briefing on whether it's appropriate for the Court to order the Government to supply the Court with the criteria or not—I still want you to be able to advise the Court as to how long it would take to collect the data.

MR. CHO: Very well, your Honor.

THE COURT: I'll ask Mr. Levario for some assistance in terms of—I'd like to return it to the calendar in about a week for a status conference.

THE CLERK: September 16th, your Honor?

THE COURT: What time would it be?

THE CLERK: Eight o'clock.

THE COURT: Okay. September 16th at 8:00 o'clock is the status conference. Does Counsel have a problem with the time?

MR. LANNEN: I do have an 8:30 sentencing in Judge Keller's court, your Honor. It looks like it will be continued, I think that date—that time is all right.

THE COURT: Okay. I view this as just a status conference for the Government to report to the Court how much time it is going to take for the Government to collect the information, so that I will know whether or not that's going to affect the trial date and how much—what deadline I should set for the Government to provide the information.

Now, Government's Counsel has indicated that he might want to do further briefing on this and if he does so, then the Defense may respond but I don't view September 16th as the date when the Court will resolve that issue because you need sufficient time to do the research and brief the Court.

The data can still be collected. Whether or not it has to be turned over, maybe will depend on what these cases say.

Anything further on this motion—or these motions?

MS. O'CONNOR: Nothing further, your Honor.

THE COURT: I'm leaving the trial date at October 6th.

There is a bail motion on Mr. Armstrong and Counsel may be heard, and I am interested in having Counsel indicate further to what extent Mr. Armstrong was responsible for any of the continuances that have been granted in the case, and also whether or not he did in fact stipulate to the continuance, join in the request or what his position might have been relative to these continuances, and I raise that because he specifically addresses the fact that he's been in custody for a certain length of time and he thinks maybe he'll be in custody even longer. I think he

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CR92-336CBM

Los Angeles, California
Friday, December 4, 1992
2:30 p.m.

UNITED STATES OF AMERICA, *Plaintiff,*

v.

CHRISTOPHER LEE ARMSTRONG, *Defendant.*

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE CONSUELO
B. MARSHALL
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

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LOS ANGELES, CALIFORNIA
FRIDAY, DECEMBER 4, 1992 2:30 P.M.

(Call to order of the Court.)

MR. CHO: Good afternoon, your Honor. Lawrence Cho on behalf of the United States. With me at Counsel table is Miriam Krinsky, Chief of the Appellate Section of our office, and Detective Mark Campbell, Viejowood Police Department.

MR. REED: Good afternoon, your Honor. David Reed on behalf of Christopher Armstrong; he's present in court.

MR. WALSH: Good afternoon, your Honor. Joseph Walsh on behalf of Robert Rozelle, who's present.

MR. BORTMAN: Good afternoon, your Honor. Dave Bortman on behalf of Freddie Mack, who's in custody.

MR. LANNEN: Good afternoon, your Honor. Timothy Lannen on behalf of Aaron Hampton, who's present.

MS. O'CONNOR: Good afternoon, your Honor. Barbara O'Connor on behalf of Shelton Martin who's also present in court.

THE COURT: Good afternoon. The matters before the Court are a motion for reconsideration by the Government and the parties have responded, at least some, to the issues that have been raised by the motion for reconsideration. I'll give you an opportunity to be heard and then the Court will issue it's ruling. It's the Government's motion, so I'll start with the Government's Counsel. I did receive the Government's supplemental declaration of Mr. Robert Wall in support of the Government's motion.

MR. CHO: Thank you, your Honor. Your Honor, I'm going to address basically just some of the factual things that have occurred, and some of the additional declarations that have been submitted to the Court. Additional arguments, I would like to ask leave of the Court. The Chief of Appellate would like to address the Court as well, once I'm done speaking on the legal matters in the case.

To bring the Court up to date, we're here today because there's been a ruling in the matter—as you'll recall, I think it was about a month or two ago—there's a motion set on for discovery and/or dismissal for selective—on the basis of selective prosecution. The matter was briefed—I think all parties in the court are in agreement as to what the law is, and that is that it's up to the Defense to show that the Defendants—that similarly situated Defendants are treated differently, and also to show that there was discriminatory intent—at least some showing under the law. It's a two-prong test and that's been the test since *Wayte vs. United States*, a Supreme Court decision back then. At the time, the facts before the Court were a declaration—was a declaration from the Public Defenders office, and that declaration stated that, approximately twenty-six cases they have represented were crack cocaine defendants, all of them were black, and that was taken from a sample approximately three years back. Based on that, the Court ruled that discovery should be forthcoming, that as a matter of law, that that declaration submitted by the Public Defenders office was sufficient to meet both elements, and the Court remarked in its transcript—in its comments to the Government at the time, that part of the decision was based, of course, on the showing made by the Defense Counsel. Also the fact that there was no explanation made by the Government on why this particular case was brought against these Defendants, and asked the Government to come up with a criteria, also, for the crack cocaine cases that have been brought and at least some sort of explanation, not only as to this case, but as to some of the other cases—crack cocaine cases—that the Government has brought in the past. Based on that, the Court asked the Government—ordered the Government—to produce a listing of all Defendants—excuse me, all crack cocaine cases that have been brought in the last three years, the race of each one of the Defendants in those cases, and an

explanation as to the criteria that the Government used in selecting those cases and bringing those forth.

Now, in the Government's motion for reconsideration, we submitted numerous declarations and other additional facts for the Court to reconsider. First of all—the first and more important thing that has been brought out in the Government's motion for reconsideration, is that the entire premises upon which the Defense has relied—that is their declaration of twenty six Defendants all being black, having been defended by the Public Defenders office, that has now been shown to be faulty. The original declaration stated that—the inference was that all of the Defendants that they have defended in the last three years for crack cocaine were black, that has shown to be false. The Government has provided declarations and shown that the Government has prosecuted in the last three years—just based on a random sampling done in my office—as least seven non-black defendants for crack cocaine. I've learned just today, by speaking to other assistants in my office, that there were four more additional defendants that are being currently prosecuted by our office who are non-black. That is, *United States vs. Do, Tat, Doan*, case number 92-926, before Judge Rafeedie; those are three Asian defendants who are being prosecuted for crack cocaine. Also, *United States vs. Mendoza-Martinez*, case number 92-993, before Judge Pfaelzer. An assistant is prosecuting a non-black defendant in that case for six hundred grams of crack cocaine. Interestingly, in the *Do, Tat, Doan* case—the three Asian defendants—one of the defendants is again being represented by the Public Defenders office, that would be Allie Blanco. That brings the tally—the informal tally by the Government—of at least eleven non-black defendants within the last three years that have been prosecuted for crack cocaine, five of which have been represented by the Public Defenders office and was not included in their listing that was submitted to this Court.

Secondly, the Government has provided, to the Court and to all Defense Counsel, a listing of all of the narcotics cases that have been prosecuted in the last three years by our office—as the Court can see, easily over a thousand cases, and the Government will submit that a showing of twenty-six cases out of these thousand cases, is insignificant when looked at in the totality. Secondly, the Government has submitted to the Court some explanation, and I think has answered the Court's question as to why there is so many crack cocaine cases that involved black defendants, and that is the declaration of DEA Agent Ralph Lochridge, as well as a DEA report that was submitted to the Court. The report stated that crack cocaine is a very, very big problem here in the Los Angeles area, and that part of the reason why there apparently seem to be so many black defendants that are coming forth in these sort of prosecutions, is that that particular type of narcotic is controlled, in the large part, by street gangs, and these street gangs operate out of areas that are very heavily populated with minorities, and so as a result of that, oftentimes, the type of dealers and the type of criminal defendants that are brought forth, are from these street gangs, and these street gangs are, again, a membership that is fairly minority heavy, specifically black African Americans.

Lastly, I'd like to—like the Court to consider this most carefully—I think that the Government has now come forward and provided to the Court, the criteria that the Government has used in bringing crack cocaine cases, and has shown why this particular case was brought, and why this particular case meets that criteria and I think that this criteria shows definitively that race has absolutely no—no part, plays no role whatsoever in the bringing of crack cocaine cases in general, and crack cocaine cases in this particular context—in this particular case. For example, the Government has shown that some of the factors that are

looked upon are the quantity of crack cocaine seized—in this case, over a hundred grams of crack cocaine, spread out over several purchases. That's twice the mandatory minimum amount of fifty grams of crack cocaine necessary for a ten year mandatory minimum.

Another factor, federal involvement in the case—whether or not there are federal agencies taking part in the investigation, whether its a joint investigation. Certainly in this case, as the Court is aware from declarations submitted and previous hearings, the ATF Agents, Bureau of Alcohol, Tobacco and Firearms, was a joint case agent in this matter and helped investigate this case from the firearm standpoint—investigation firearms—federal firearms violations. Looking at the prior—the prior criminal histories of some of the Defendants, again in this case as I submitted in my papers, several of the Defendants have prior felony convictions, some very seriously, others have firearm convictions in the past, at least one Defendant is—has two prior felony narcotics convictions, and as a result of that is facing up to a mandatory life sentence. Another Defendant has a prior narcotics conviction and a violent—violent crime conviction, which would qualify him to be a career offender. Another criteria, the presence of firearms in the case. As shown in the indictment, there are multiple 924-C counts alleging the use of illicit firearms in connection with the narcotics transactions. The scope and the extent of the ring, again, as the indictment shows, is this case involves multiple purchases of crack cocaine and the multiple uses of firearms in those situations. It involves multiple Defendants, various different runners that came about to deliver the crack cocaine.

Lastly, a level a dangerousness—whether or not this is the type of case that is deserving of federal prosecution. Even taking aside the quantity and the use of firearms and the federal firearms violations, there is, of course, the threats that were made to police—to arresting officers.

This is the type of case in which ATF was specifically designed to assist in talking about violent felons, people that are willing to use firearms in protection of their trade, people that do not hesitate at threatening even law enforcement officials at the time of their arrest. These are the types of individuals that the Federal Government is bringing its forces to bear upon and to prosecute.

Lastly, I think that the affidavits and the declarations submitted by the Government agents as well as the state agent, that is, Mark Campbell, and the U.S. Attorney's office definitely show that there simply has been no discrimination as to these Defendants. In other words, regardless of what the discovery may show, these Defendants simply cannot make a showing, cannot make a case, unless they can claim and can show that they were discriminated against because of their race; otherwise, they would have no standing whatsoever. In essence, your Honor; we're sort of short-circuiting the discovery issue by bringing this to light right now before the Court, so that the Court can see that there simply is no race problem involved with this prosecution. The agents and the United States Attorney's office have submitted a declaration telling the Court that race was not a factor whatsoever, that in essence—in fact, race was not even known at the time of the initiation of the investigation. These Defendants were chosen when they came forth and delivered the narcotics, when they met with the confidential informants once the buys were set up. Their identities nor their races were absolutely unknown to the investigation agents when this case was initiated.

Furthermore, the agents have given testimony that many black defendants, in other words, many other defendants that share the same quality, the same discriminative quality, if you will, that is being African American, are not brought federally, they are brought by the District Attorney's office, and so, certainly that cannot be the

reason why these Defendants were prosecuted by the Federal Government in this particular case. And of course, many non-black defendants have been prosecuted by the United States Attorney's office and by federal agencies, as is evidenced by the declaration submitted to the Court. In essence, that showing has negated any possible showing that the Defense may have presented to the Court initially with their declaration. The showing of discriminatory intent—there simply is no evidence here whatsoever, your Honor, of any discriminatory intent on the part of the police official, on the part of investigating agents, the agencies, nor of the United States Attorney's office in this matter, and they cannot—that—at least that prong of the two-prong test that they must meet to qualify for discovery, has now been affirmatively met and disproven.

Lastly, your Honor, I just want to touch very briefly upon the constitutional concerns involved in this case. There is, as I pointed out in my papers and as I pointed out orally to the Court at the last hearing, that constitutional concerns concerning the separation of powers. I have submitted to the Court authorities, that has talked about and touched upon some of the issues that are extremely—of extreme importance when you conduct this sort of inquiry of the type that is at issue here. For example, the Supreme Court has stated that there are concerns of prosecution delay; certainly, that's something that has been experienced in this case.

This hearing, I think, initially occurred back in September of some sort, about that time, its been now three months at the very least of delays that have been on occasion, at least in part, because of these motions. There is the danger of the revealing of law enforcement strategies. Of course, as the Court can see in the documents submitted, we've had to disclose to the Court and to Defense Counsel many of the criteria, many of the factors, that the Government looks upon in deciding what

sort of cases to bring—what sort of—how to allocate law enforcement resources. This, of course, is the sort of information that is—would be of great use to people that engage in this sort of conduct, and would greatly harm the Government in its efforts to continue to enforce the laws. And lastly, there is the concern that this would chill law enforcement efforts to bring these sort of issues to light and run the risk of bringing these—of having to expend resources on this particular issue—runs the risk—I think ultimately, if the Court decides to grant the motion for discovery, and to eventually even grant the motion for selective prosecution, I think the danger there is—we are really, in effect, creating an affirmative action. In other words, what happens if the motions are granted? What actually happens is that any defense attorney in the future can come forth in any case—in any similar case, and base an argument based on just two things, two representations to the Court. That is, one, in that defendant's defense attorney's history, he or she can only recall prosecuting a particular type of defendant, that share the same quality—same ethnic race—that's based upon that and the fact that their client is of that same race. That alone would entitle them to reams of discovery, to delay criminal prosecutions months on end, and that, if the Court were to dismiss the case and find selective prosecution, then that in effect would confer upon those classes of defendants. The defendants were lucky enough to share the same trait of defendants in the past, an advantage that other people wouldn't have. In other words, if the defendants in this case were white, or non-black, they could not bring this motion. Future defendants who are non-black, would not have this advantage. They would come before the Court and they would not have to opportunity to get discovery from the document—from the Government for three years' worth of criminal prosecutions. They would not have the benefit of months of delays in the prosecutive efforts while

witness' memories dimmed and the Government suffers prejudice. Those are the concerns that I would like the Court to bear in mind when it considers the Government's motion in this matter. Other than that, your Honor, I have the declarants—most of the declarants here today if the Court has any questions or wishes to speak to any of them, I'd be more than happy to accommodate.

THE COURT: I don't. At this point, I would direct just a couple of questions to Government's Counsel. As you indicated, there were four things that the Court ordered Government to provide for purposes of permitting the Defendant to conduct further discovery and then to decide if it would be appropriate to file a motion to dismiss for selective prosecution. You have provided the Court with evidence, as you addressed, in the form of declarations and also some statistical data that lists names, charges, various types of information. Maybe you could address—to what extent do you believe that you have now provided the Court with the information that the Court requested? If it's your position that even though you file a motion for a reconsideration, that in filing that motion, or supporting that motion, you have in effect given the Court what the Court requested, you might want to address that. If you believe that you've given some of the things but not all, then you might want to address which of those you've satisfied, which you haven't, and then address the statement as to why you don't feel that the additional information should be provided. I believe that you have probably addressed that by the argument that you just made, but just to make the record clear, you might want to be specific.

MR. CHO: Certainly, your Honor. Let me address the first issue. I'm glad you brought that up because I think that's a very important point. That is, I do believe that the Government has not met, at least in part, the order that the Court placed upon us. That is, the Government has now

provided a listing—what we believe to be a complete listing of all narcotics charges, prosecutions—or rather, indictments—that our office has brought within the past three years. Armed with that information now, the Defense, I think, has the opportunity to go sift through that and find out for themselves whether or not there are crack cocaine cases in which only black defendants are brought, whether or not there are non-black crack cocaine defendants out there that have been prosecuted. They can look through those cases just as easily as the Government can. Those cases are available to the public, they're available to Defense Counsel, and they're available to the Government, but they—

THE COURT: So, you believe that you have complied with number 1, which was a list of every case in the last three years in which the Government charged both crack cocaine offenses and firearm offenses?

MR. CHO: Yes, I believe that the Government has complied with that.

THE COURT: Number 2 was to list the race of each of these Defendants; you have not done that.

MR. CHO: We have not done that, your Honor, but I think, again, the Defense has the same opportunity to go and find out the race of these defendants as the Government does. It would be a very simple matter to go look up the files in the cases, to speak to pretrial services or the probation office to ascertain the races of the defendants involved.

THE COURT: Is it the Government's position that you don't have information that lists the race of these persons?

MR. CHO: Well, not compiled, your Honor. What would have to be done, is each individual case would have to be retrieved back from some stored files somewhere, and looked through to ascertain that. But no, there is no keeping of the races of any defendants as to any crimes in the United States Attorney's office.

THE COURT: And, number 3 was whether each case was investigated by federal, state, or joint federal and state law enforcement authorities. Do you believe that you've provided that information of the lists of cases that you've given to the Court?

MR. CHO: No, your Honor. I don't believe that we've provided that.

THE COURT: Now, is that in—maybe you could respond to why haven't you provided that? Is it because you feel that you shouldn't have to, or you don't have that type of information readily available, or what's the Government's position?

MR. CHO: The answer is both. First of all, in order to do so, it would take the same amount of effort as it would to go and pull each one of these cases individually, and go through and ascertain whether or not they were jointly investigated. The second answer to your question, also is yes. I don't think that that necessarily is relevant in this inquiry. The inquiry is whether or not defendants were prosecuted for cocaine based transactions because of their race. Whether or not it was initiated by the—by local law enforcement, or federal law enforcement, or a combination of both, I don't see how that sheds any particular light on the issue.

THE COURT: Well, I understood you to say—I think I did—that one of the criteria that you would use, would be whether or not it was jointly investigated by both federal and state, and so for that reason, the Court felt that that was an appropriate question for you to respond to. It might be the theory of the Government that when federal agents are involved, then the Government elects to have the cases prosecuted on the federal side as opposed to the state. On the other hand, if it's a case where no federal agents were involved, one might question why is the U.S. Attorneys office involved in the case, and be looking to some answer to satisfy that.

The last category, was an explanation for why the cases were brought by the U.S. Attorney's office. I think in your explanation to the Court, you suggested that you had provided the Court with some, at least, of that criteria. It's addressed in the declarations provided and it was addressed in your arguments.

What is your position as to number 4? Do you believe that you have satisfied that or do you believe that you have given some of the reasons, although you might not have given all of the criteria?

MR. CHO: I have given the reasons that we prosecute cases in general, specifically with respect to crack cocaine cases, the criteria that the U.S. Attorney's office has traditionally and is currently using. I have not broken down for the Court, as I understood the Court to order, each individual case, which criteria it met or as to why each individual case was brought, in other words, a justification for each one of those cases brought in the last three years. I don't think that I provided that.

THE COURT: And just one other inquiry the Court would make—you've addressed the question of the adverse effects that motions of this type, whether granted or not by the Court, the adverse effects that that has on your office as well as those involved in the investigation or getting defendants to trial and so forth, and I'm addressing or responding to your comments about the delay that it has caused. I'll just comment briefly on the delay. It is probably true that this motion has caused some delay in the case, but of course it's true that there have been other reasons for the delay that are not related to this particular motion. I assume that it would be the Government's position that, if it were true that race was a motivating factor for bringing the cases in federal court rather than stay, that certainly at some point someone should require the very exercise that this Court is suggesting would be appropriate.

MR. CHO: Absolutely, your Honor. I don't mean to demean that whatsoever, and certainly if this was a situation where there was any sort of inclining, or any sort of showing that there was some discriminatory conduct involved, then of course, the U.S. Attorney's office would be the first to initiate a full and complete investigation into it and would expend whatever resources necessary, but the reason I submitted the arguments I did was because in this particular case, I'd submit to the Court that the evidence presented was far below than what was required. Let me just tell—submit to the Court that, even if there was some evidence that were to go below the showing required by the Ninth Circuit and by the Supreme Court, if there was—even if there was a suspicion of that amount, let me assure that Court that the Government would take whatever resources—whatever actions necessary to root that out, to investigate that fully, and to determine if that were the case, and cases like that would not be brought.

THE COURT: All right. Why don't I let Defense Counsel respond to the argument that's been made so far, and then I'll permit Government's Co-counsel to be heard as far as any other legal arguments that need to be made.

MS. O'CONNOR: Thank you, your Honor. We would first of all object to the reconsideration on the basis that no new facts have really been shown that were shown previously to the Court. The declarations that were provided were basically individuals saying, "I've looked at myself, and I don't see any motivation here based on race." In the case of Mr. Martin in particular, he fails to meet most of the criteria that was laid out for the Government for bringing a case like this over here to federal court. He does not have that kind of extensive record. There's minimal evidence of his involvement; what evidence there was is probably gone now because there's no informant to testify, yet he remains sitting here in court. The *Bourgeois* case specifically states, and we argued this

earlier, that selective prosecution could be raised by long term targeting of the gang to the exclusion of others. What we're saying here, your Honor, is the Government seems to have information at its fingertips. Mr. Lochridge says, "I know, as a Government expert, that blacks use crack and whites use something else; and Asians use this", yet they seem reluctant to give us the statistics—the reports that he's relied on, so in essence, he says, "Believe me, I'm looking at myself; I'm part of the Government", and what we're saying is, we're not looking for a dismissal at this point, we're looking for discovery. It's a different criteria; we just have to show a collaborable basis for the claim. The individuals in our office that were located by the U.S. Attorney, I think Marla Beller explained in her supplemental declaration, why they weren't in her short analysis. But, interestingly of course, they are minorities as well. The Do, Dat, Doan case—if we are still in the case at all, and of course is another minority and Asian defendant—however, I believe there was tremendous amount of conflict in our office—I think we had to conflict out on all these cases—because the Government seemed to have people from one case informing on another case. In any event, they are all minorities; there's not a white face among them in any of those, assuming that one considers hispanics also to be minority. The discovery, as we stated again, would help us to locate other individuals—the listing from the Government provides all their drug cases, it does not single out the crack cocaine offenses and the Government has argued they shouldn't have to do that, that crack isn't any different, yet they provide declaration saying, "Yes, crack is different", and that's why these people end up all being black defendants.

THE COURT: Let me ask Defense Counsel a question. Is it the position of the Defense that the sentence that's required under sentencing guidelines is different for the crack cases then it would be for other—either cocaine cases or just other narcotics cases?

MS. O'CONNOR: Correct, your Honor, and I pointed out, I think, in my brief that, we are not just seeking some—we're not singling out crack as different, the statute does, and provides that crack is treated much more harshly than cocaine, for example, and as the Court is aware, there are cases on that issue.

Mr. Reed, I believe, lodged with the Court a newspaper article that appeared last week in the *L.A. Times* on the 23rd, analyzing this whole problem, and the distinction between crack and cocaine, and there is a quote from our office and our statistics, as well as Northern District of Georgia, in which sixty-nine out of seventy defendants charged were black. National figures provided by the United States Sentencing Commission indicate ninety-two percent are black in the crack cases and forty-five sentenced for powder cocaine are white.

Mr. Campbell interestingly says he's been involved in cases with all different races, but everyone brought over here has been black, and perhaps if they had indicated for each of these Defendants, why, beyond their race, why they're brought over, we might have more of a rationale. The Government must have some statistics on race, or Mr. Lochridge wouldn't have been able to form an opinion, so we believe they should provide us with the information and then let us provide it to the Court for the Court to decide whether they're looking at race in an impermissible manner, rather than policing themselves. Similarly, they have not provided the information about the joint investigation, and I know there is some case law, your Honor, on selective prosecutions by joint task forces, and what criteria they must have. They have provided an explanation generally for why they bring cases over here. I don't think it's sufficient and I don't think that our burden is as great as the Government makes it at this stage for discovery, your Honor. I submit on that.

THE COURT: Any of the other Defense Counsel wish to be heard?

MR. LANNEN: Yes, your Honor, thank you. Tim Lannen for Mr. Hampton. I just wanted to reiterate first what Ms. O'Connor said, that there is an important distinction in number 1, in that these cases—my understanding is that these cases do not cover what the Government has given the Defense, and not cover crack cocaine only, and that distinction is critical because, as the *L.A. Times* article points out, that basically the nation is becoming aware of what criminal defense lawyers have known—criminal defense lawyers that practice in state and federal court—have known for some time, that the filing of these cases in federal court, the distinction is huge, and in practice, is very racist. That is, that if somebody is filed on over here, as I mention in my declaration as far as Mr. Hampton, for the same substance offense, the sentence is extremely higher, and in fact, in practice it is black individuals who are being brought over to federal court on these offense. I wanted to just comment briefly on the affidavits of the agents. My client, Mr. Hampton, does not come under the—first of all, there are some inconsistencies. The declarations of the agents differ as to what the criteria is. Agent Scheper mentions several general criteria, one of which is that threats had been made to the arresting office by a co-defendant, not by my client; so are we saying that if one defendant in a case makes a comment or a threat—makes a threat to an officer, that all co-defendants in that case are subject to much higher sentences for their offense by being brought over to federal court with the co-defendant? Agent Scheper lists that as one of the general criteria.

Another criteria that is mentioned by all the agents, which I think is deceptive, is that there's a quote "federal firearms violation", but in fact, a weapon is a weapon. It's a federal offense if it's filed over here; it's an offense in state court, as we know, many narcotics cases in states courts have firearms use or firearm allegations, or principal

armed as part of the statute that it's brought under California state law, and there are enhancements for that. So, when the agents say there's federal firearms violations as one of the main reasons cases come over here, that's simply not true, because many more firearm—narcotics involved firearms offenses, including crack cocaine, are brought in state court than are brought in federal court, so that is—I don't believe is an accurate criteria for a case to be brought over here.

Specifically, as to Mr. Hampton, if you judge him against all these criteria, he should not be here, and he is the individual in this case who the assistant—who the United States Government has filed an allegation of mandating a life imprisonment without parole. Mr. Hampton has two non-violent narcotics convictions involving extremely small amounts of narcotics—I'm talking like ten dollars worth. He has no firearms priors of any kind, and as I mentioned in my declaration, if Mr. Hampton were to be prosecuted in state court, he would be subject to approximately six years in custody, whereas, having brought him over here to federal court, they are aggressively—they have already filed a motion for enhancement, which would mandate this Court to sentence him to life without parole.

For that reason, I think that this motion—that is very well—that the Court's ruling is correct on the motion for discovery. One additional thing—there are no allegations, I believe of any of the Defendants here, that they belong in a street gang. There's nothing I see—certainly not as to Aaron Hampton—so what it appears to be, is that the agents have made declarations which basically are conclusions, listing some criteria as to why Defendants are brought to federal court, but none of which hold up in general practice as opposed to state filing or as to the individuals, at least as to my client in this case.

THE COURT: While you're there, I'll just ask you one question. As you look at what has been provided, and the

items that the Court required the Government to provide, what do you think has not been provided within that group or list of things, other than the failure to identify the Defendants by race?

MR. LANNEN: I'm sorry, to identify—

THE COURT: Other than identifying the Defendants by race. The Government concedes that in its list of names that they have provided to the Court, they have not made any identification as to the race.

MR. LANNEN: First of all, your Honor, as I mentioned, and I think importantly, is that number 1, the Court ordered a list of every case in which the Government charged crack cocaine offenses; that has not been distinguished, and I think that's an important criteria. It's not just that they bring cocaine cases over here, that's not true, the powder cases go both ways, so that is an important distinction—an important item that's missing. The race issue, and number 3 I believe, has not been provided, and I don't think number 4 has been provided either.

THE COURT: All right. Any of the other Defense Counsel wish to be heard?

MR. REED: Yes, your Honor, I'd like to be heard. David Reed on behalf of Christopher Armstrong. Your Honor, I think that the news article has been alluded to by Co-counsel, and I'm not sure whether or not the Court has had an opportunity to read that *Los Angeles Times*, November 23—

THE COURT: I haven't, as a matter of fact, as I listen to the Counsel indicating the declarations, I think that there probably are some things that have been filed that I have not reviewed, but I would like to have you address it, then if it's necessary for me to review them, I will.

MR. REED: Your Honor, I think—I would like to lodge it with the Court, but I think that the paramount thrust of the article is that blacks compose 92.6 of the people who

are prosecuted for crack cocaine offenses, and anglos throughout the United States are—compose a percentage of 4.6, and other races .2, and the *L.A. Times* usually does a very good job of investigation. This article was done by staff writer Jim Newton—I know Mr. Newton—and it's a very interesting article. Basically the conclusion of all of the people who have been doing investigation—journalistic investigation in the area, have come to the conclusion that there are much harsher sentences for crack cocaine and that it's racially unequal. It's unfair, the penalties are stiffer, and the law enforcement authorities, for whatever reason, in practice—I don't know why—are just not prosecuting white people for this particular type of offense, and we all know that white people are doing crack cocaine. I'd like to lodge that with the Court, and if the Court wishes an opportunity to read it, the Court—of course the Court is invited to do so—and may I approach your clerk, your Honor?

THE COURT: Let me inquire, did you previously file it with the Court? Because I thought maybe that's what was being represented in the form of a declaration with the article attached thereto, you'd actually filed it, but apparently that's not the case.

MR. REED: That's correct. It has not yet been lodged with the Court.

THE COURT: You may lodge it.

MR. REED: Thank you.

THE COURT: Other Defense Counsel wish to—

MR. REED: Your Honor, the other thing I wanted to say is—

THE COURT: Yes?

MR. REED: I wasn't finished—

THE COURT: Okay.

MR. REED: I also filed a supplemental declaration. I came into the case recently, and basically, I'm sure the Court has read the declaration that I filed, but I have had

some experience both across the street—most of my experience across the street in the state court hasn't been in the sense in actually handling personally a lot of cases over there for crack cocaine, but as a result of being on the executive committee of the bar panel over there, I kind of oversee a lot of different areas within the criminal defense bar, and interact a great deal with the judges, the defense lawyers, police officers over in state court, and I can represent to the Court, and did represent to the Court, that there are many, many cases that are brought in state court involving Latino defendants who are prosecuted for crack cocaine, and as I indicated in my declaration, I have not seen any Latino defendants brought over to the federal court. The only thing I've seen in federal court are black defendants being prosecuted for these cases.

Today's basically the first day that I found out from the prosecution that there are, I guess, two cases, out of a thousand in the last three years, there happens to be two cases that have been brought in the federal court that don't involve blacks. One, I guess, a Latino case, and another case involving Asians. As Mr. Cho pointed out—he kind of was putting the cart before the horse—when he spoke about these two cases. I got the feeling that his argument was more directed at trying to convince the Court not to eventually grant the motion down the road, instead of convincing the Court more or less why the Government hasn't really complied with the discovery request in the first place. Mr. Cho, I think, understands full well that my giving us a list of a thousand cases, and telling us to go down to the clerk's office and pull a thousand files to find out who's black and who's Asian, who's white, it would be virtually impossible because the nature of the information that is included within the case file jackets, really doesn't reflect whether or not the Defendants are black or white. The information which may pertain or go to that issue is not a matter of public record kept within

the file. The probation reports are not located within the files, files in the court downstairs, those are confidential documents, as the Court knows, the pretrial service agency are documents which are confidential, you need a court order to get those revealed. We could go down until the cows come home and never find out who's black and white, with respect to the cases that we pull. Likewise, we could never find out which police agency has investigated those cases, because the police reports and the discovery are not filed in the court file themselves. Those, of course, are given to the private counsel who represented those defendants; however, I might indicate to the Court that the Government has all of that information available to it, the police reports are contained within the files that they have supposedly hidden in these archives. I'm not sure whether or not located within the fields, however, the United States Attorney's office lists the race of people within the files they keep, perhaps the prosecutors that have prosecuted those cases could simply be asked what the races of the people were. Most of those cases are handled by the narcotic division on the 14th floor; I believe that there's not a great deal of turnover or there hasn't been a great deal of turnover in the narcotic division with the United States Attorney's office within the last three years. Yes, they've lost maybe six or seven attorneys, who still happen to be in the area, and they can easily telephone the attorneys and ask them if they recall whether or not the people were white or black.

What I'm trying to impress upon the Court is, it's impossible for us to get the nature of that information and we do feel that—whether or not the law enforcement agency that handled the case is important. Yes, if it's a federal agency that has handled the investigation, and the case has gone federal, that would argue against, in a certain sense, any kind of argument that there may be discriminatory practices, but if they're state police agencies

that have investigated case—state cases which would have normally gone—been filed over in state court, and if these state investigations involve black people, and then, lo and behold; theses state cases—state police agency cases have been brought over to the federal court, that would kind of confirm and corroborate that something—some type of skullduggery may be afoot. Your Honor, we do not feel that it's a great burden on the Government to provide that information.

I note that Ms. Krinsky is present in court; she may be the expert in the field of law with respect to discriminatory practices. I know it's not the Government's intent to bring Ms. Krinsky down to the court in a show—in an inferential show that whichever way the Court may happen to rule, the U.S. Attorney's office may take the case up on appeal, due to the fact that Ms. Krinsky's the head of the appellate division, I know that the Government wouldn't do such a thing as that.—

THE COURT: Of course, it's not a factor for the Court to consider anyway, because regardless of how the Court rules, if one side or the other feels that it needs to be reviewed by higher courts, then that's why we have higher courts.

MR. REED: I was saying to Mr. Walsh, as the argument proceeded, that we know that Ms. Krinsky is in charge of the appellate division, and not the intimidation division. And so, your Honor, I feel that the showing that we've made is that preliminary showing which would mandate the Government to bring forward these statistics; it's not that hard. It's not going to interfere with any kind of Governmental, or rather executive branch powers, whether or not cases are brought in federal court because the DEA investigated them, isn't going to be anything that drug gangs are going to be able to use in order to curtail their activities; they don't know which agencies are investigating them. If a case is a case that involves a gun, that's

going to have—that type of criteria is going to have very little effect if that type of information is revealed to gangs out in the community. Those arguments don't carry a lot of water, and I would submit it, your Honor.

THE COURT: Any of the other Defense Counsel wish to be heard?

MR. WALSH: Yes, just briefly, your Honor. In terms of the statistics that have been provided to us by the United States Attorney's office, those statistics are all of the prosecution's under Title 21, Section 841. I have looked through it and have found five of my former clients that I represented over the past three years, none of those former clients that were listed here were rock cocaine cases. Two of them were heroin cases, and the other three were cocaine in a powder form. So, I'm not so sure that this listing is going to be as helpful as the Government would—has represented it. They have just simply provided us with all the narcotics prosecutions, they have not given us a list of the rock cocaine cases which is really what we were asking for in the discovery motion, so giving us this list is deluging us with all of the files to look through and it's not really narrowing the scope to what the issues are in the case and that is, how many rock cocaine cases there are, and what are the races of the defendants in those cases.

THE COURT: How many of the attorneys involved in the case are Court appointed? Are all of you Court appointed other than the Public Defenders office?

MR. WALSH: Yes, all of us and one public defender.

THE COURT: So, we have four Court appointed Counsel in the case and one Public Defender. It seems to me, and the Government might want to comment on this, that just in terms on who can best provide the information, we have four Court appointed Counsel. If the Court were to charge them with the responsibility of going through the list of cases that the Government has provided to ascertain

the race and whether or not it was a joint investigation, and whether it was a crack cocaine case versus another narcotic, it would be a tremendous expense to the Government. We would have to pay them at the hourly rate—it is a small hourly rate—but, many of our judges are complaining, even now, about the fees that we are paying to the Court appointed Counsel based upon these cases. The Court, of course, has to appoint counsel to represent them if they can't afford to represent themselves, and the fees are quite high. So, I think one factor to be considered, if the information is available to the Government, and it's probably true that you don't keep these races, it's not one of the things that your office would have an interest in, but you could certainly obtain copies of the arrest report and that information would be on the report, and it probably is true that if somebody has to get the information, it would be less costly if the Government were required to provide it then if the Defendants were required to try to obtain it. Whether that is proper consideration or not, I think it is something that should be reflected on the record.

I would ask the Defense to consider whether or not the list of items that the Court ordered be provided in fact, or the things that are needed in order to permit you to decide whether there would be a basis for filing the motion or not, and it is possible that maybe the Court did not list those things that are needed, and also, maybe the list could be reduced somewhat. The Court ordered a list of every case in the last three years, maybe the Defense would be satisfied if it were one year, or even something less than that. You've indicated that the list does not break the charge down in terms of the type of narcotics, that would probably limit the list somewhat if the Government were to provide just the crack cocaine as opposed to all of the various narcotic charges, and I think the Government addresses this in its papers. It appears to the Court that one of the reasons it's important to break this list down just to

the crack cocaine, is because that's what's charged here, but also, if it is true that the sentencing guidelines impose different sentences based upon the type of narcotics, then it would be more important.

One of the arguments that Defendants seem to be making in these tapes is that the reason that you see these cases in state court is that the sentencing guidelines impose such a high sentence compared with the sentence that would be given in state court. For that reason, some decision has been made by someone, we don't know who makes that decision, to bring these cases to federal court so that we could in fact get a life without benefit of parole on a very young person whose background seemably does not equate with that kind of a sentence, but the guidelines permitted, so therefore, if the case is here, and the Defendants are convicted, then the Court must impose that sentence. I'm aware that the cases suggest that just because the sentences are higher in federal court than they are in state, that that's not a basis for the Court assuming, or Defense assuming, or anybody taking the position that the cases have been improperly brought here, so I know that that's not one of the factors to be considered. If it does appear that the cases that are being brought involving crack cocaine, if all the defendants in those cases are black, and none are of other races, or the others—a very small percentage of others—then it does cause one to question what the motivation is. We don't know, because the Government hasn't provided the information, who really does have the responsibility for making the decision, so I would invite the Defense—there might be some way of getting the information that would be less burdensome for whoever is to provide it, by simply reducing the list, making it smaller, not three years, but something less. Specific as to particular type of drug, you suggested that crack cocaine would be appropriate.

Now, I believe that I added in the firearm offenses; I don't believe that the Defendants initially asked that the

list contained both the crack cocaine and firearms. I added the firearms because I think in this case the Defendants were—some of the Defendants were charged with those, and I thought that that was necessary to better analyze this case, but maybe that's not one of the things that you think are important. So, I'll ask the Defendants to think about that, if you want to respond now, you may, and then I would like to hear from Government's Counsel on the other issues that they think need to be considered.

MR. REED: Just give us a second, your Honor. (Pause.)

MR. REED: Your Honor, we've been—we appreciate the Court's suggestions, and that looks like a tremendously helpful compromise, something that's going to help both sides, but in—we've been informally told by the United States Attorney's office, that depending on the Court's ruling, should they order the Government to provide discovery of this nature, that they intend to go up on appeal. If we were amenable to compromising, we would ask the Government would they still wish to go up on appeal, because we don't want to compromise and then end up going—making perhaps, our burden a little bit tougher by compromising, and then being faced by going up on appeal at the same time. In other words, we're willing to compromise—

THE COURT: Your position apparently is, that you think three years is a reasonable amount of time to request for this information as opposed to some shorter period of time?

MR. REED: For example, we could have two and a half years, two and a quarter years, and we'd be willing to give up the nature of the narcotics, just concentrate on crack, and we'd also be willing to give up firearms; that's not the thrust of what we're trying to do. Those are tremendous compromises, but we're not going to compromise if the Government insist on going up on appeal.

THE COURT: All right. Let me hear from the Government's Counsel in response—and, I don't know that

anybody needs to spend a lot of time talking about the compromise, I suggested that that might be one approach, but obviously if it—if that's not going to be helpful, then we don't need to address it.

MS. O'CONNOR: Your Honor, can I just add my two cents before Ms. Krinsky comes in?

THE COURT: Okay.

MS. O'CONNOR: Which is just—I would point out that the U.S. Attorney's office, I believe, has in excess of three, four hundred assistants. We have approximately forty plus in the Public Defenders office, so in terms of resources, they clearly have the ability to do this much more easily than we do. The separations of powers concern, I think, is real, and there is concern in selective prosecution cases about joint task forces on the street without benefit of a U.S. Attorney directing them and the case is just coming over here. I don't think that anyone can argue anything other than it is clear the young black male population is being herded into MDC to face ten, twenty, thirty-year sentences. My clients certainly are twenty-five-year-olds, all on those cracks cases, they have all been black, horrendous situations—cases that state Public Defenders prosecute every day, but for some reason are brought over here. Again, specific to Mr. Martin, I would ask not only for the information the Court has asked, but for specific reasoning for these Defendants—why were they brought over here.

Your Honor, one of the cases that I think we cited to in *Gordon*, analogizes somewhat the situation to *Batson*, where the result that you see in court can give you some indication of intent, or at least a big problem that is existing. We certainly have that here. The delay, I think, is well spent. The danger of revealing law enforcement strategies, I think, was kind of a specious argument; they haven't revealed anything other than we bring drug and gun cases over. Chilling on the law enforcement efforts—

THE COURT: I think what they were addressing was, that if they must respond and provide the information that the Court has asked, that is the criteria, then they would be disclosing maybe information that they feel that they should not have to disclose. They haven't done it yet, but I guess that's why we're discussing it.

MS. O'CONNOR: The most recent declarations from Mr. Wall that says, "Well, we targeted Inglewood because it's the second most violent neighborhood, L.A. being the first" well, what's the population of L.A.? We would see more hispanics, I think, then in these kind of cases. What we're asking is, let us look at the information that you have, your analysis—what's guiding you, and then let us present it to the Court to decide. The Government can't decide on it's own that it's acting in good faith. It might not be aware—it says to us, we have blinders on as to race. Every declaration they've given says "No one in your office thinks about race". Well, that's why the Court is here perhaps. Thank you.

THE COURT: All right, I think the expert is going to give us the answers to all these questions. The first one that I would ask is, is there something that suggests that only blacks are involved with cocaine, and is that why we're seeing such a large number? I mean, the declarations almost suggest that it's just blacks who are involved in this, so whenever a crack cocaine case is brought, the defendants are going to be black because they are the ones who are involved in crack cocaine.

MS. KRINSKY: Your Honor, I'm at somewhat of a disadvantage in that I haven't read the *Los Angeles Times* article. I think it's perhaps the only day where my daughter got to the papers before I could, so she made quite a mess of it. I believe it is correct, your Honor, as the agents have indicated to the Court, that there are socioeconomic explanations that indicate why the statistics are skewed. We don't dispute the fact that the statistics do seem to

indicate a predominance of black involvement in the trafficking of crack cocaine. We don't believe that those statistics are to the exclusion of non-black involvement. In fact, Mr. Cho, in an informal survey in our office, identified as he indicated, not two cases as Defense Counsel suggested, but eleven instances where non-black defendants were prosecuted for crack cases. So, it's not exclusively black defendants; however, your Honor is absolutely correct as the agents have indicated that there are socioeconomic reasons why certain types of drugs are prevalent among certain ethnic groups. In fact, the Asian groups generally have involvement in other types of drugs, in heroin narcotics trafficking, there's been observation that white motorcycle groups tend to be involved with distribution of methamphetamine, so there are certain socioeconomic patterns. However your Honor, the Government believes that the case law tells us that numbers and statistics alone aren't sufficient—not at the level of a selective prosecution claim in analyzing the merits of that claim, but numbers alone aren't sufficient, even when we're looking at a discovery claim, because the cases tell us that there has to be evidence of discriminatory motive, or discriminatory intent, and I believe, your Honor, the reason for that is so that we can neutralize the socioeconomic factors.

We submit that we've come back and answered for, your Honor, the motive question. The question that you alluded to a few moment ago, and we agree that's a serious question and it's a significant question, and it's certainly a question that one saw running through the prior proceeding where your Honor ordered discovery to be provided. In fact, every Defense Counsel alluded to the "why" question. Every single Defense Counsel at that proceeding asked the Government indirectly through your court, "Why is my client being prosecuted?" In fact, your Honor, at that proceeding, in discussing the *Bourgeois* case, you yourself said:

"My reading of *Bourgois*, would indicate that in that case, the Government did offer some explanation for why. In this case, the Government offers no explanation."

That was on page 8 of the transcript. Obviously I wasn't present at the hearing, but at least I've had the benefit of the transcript. Again, your Honor said on page 11:

"I think the number the Defense Counsel had submitted is adequate; that would at least require the Government to provide some explanation".

Well, your Honor, since the time of that hearing, we've tried to comply to your directive to us as to what was first and foremost in your mind to heart. We've tried to now shift the landscape from a silent record, which is what you were faced with before, from a record with no explanation as to why we proceeded on these particular Defendants, and as to why we prosecute these cases in general, to a landscape where we have addressed the "why" issue. We've submitted countless declarations that explains why these Defendants were prosecuted, and that explain in general why we proceed on narcotics prosecutions and the type of criteria that we use. Not a single Defense Counsel has come forward with evidence to the contrary. None of these attorneys have indicated to you their belief that we're lying when we've told you that there are race neutral reasons in our prosecutorial decisions, and none of them have come forward with any evidence indicating that there's a suggestion somewhere, somehow that we do consider race in our prosecutorial decisions. So, we'd submit that because of the fact that the cases require both elements, not just numbers alone, but motive as well, we're required to come forward with nothing further in response to their request.

Let me also, your Honor, suggest in response in the question that you posed to Mr. Cho—we don't view these claims lightly at all. Certainly I'm not here in any belief that I could intimidate your Honor, or anybody else, I've never been deemed to be particularly intimidating at five foot four; however, I am here to suggest to the Court that our office views any charge of discriminatory practice by prosecutors or by agents, with whom we deal, extremely seriously. Were there even the slightest indication that a AUSA in our office, or an agent or officer with whom we were dealing, had charged a case, or prosecuted a case, or arrested an individual for racial reasons, not only would we be interested, we would probably be looking at prosecuting that individual. So, we do view these charges and these types of claims seriously.

However, we've tried in the intervening six or seven seeks to address the concern of the Court. The information that we haven't provided to Defense Counsel, we haven't provided because it would require an individual review of each and every one of these one thousand plus files, and I've identified, I believe, three things that I've heard mentioned today that we haven't provided. We haven't provided the race of each of these individual prosecuted in the cases named; we don't maintain those statistics. If we did, I think that there would be cause for concern if we somehow kept track of the racial statistics of the individual whom our office prosecutes. The only way we can gather those numbers is to individually pull each file and hope that there's something in the file that would give us that information. Similarly, the involvement of the agencies in the investigation, could be learned again, only through pulling the individual files. I wish that there were some easier way to do it, but there simply isn't.

And finally, even narrowing this group to crack cases, would require an individual review of each file. That's not information, again, as far as Mr. Cho and I are aware, that

our computer can pull out or that can be learned through any type of computerized run. So, we've tried to provide the more general information that our computer run makes accessible to us. We've also tried to answer the most significant question that existed at the time of the prior proceeding, namely the motive question. It would be a big expense for any party to have to go through an individual review of the file. Even if the Government did it in the form of the U.S. Attorney's office, while that may be a different pocket of the Federal Government, it's none-the-less a big expense that would be incurred by the Federal Government. And, we submit that we're not required to do it, not because it's too onerous, and not because it would be costly—we're not required to do it because it's the Defendant's burden to come forward with a showing before discovery needs to be provided, and as we indicated, we submit that they've failed to do that.

If I may, your Honor, I'd like to briefly touch on the few and really the very few cases that have dealt with these types of issues, and show how in contrast, the showing that's been made here, it is really nothing short of woefully inadequate. Defense Counsel is correct, the *Bourgeois* case is the leading case and the most recent case in the Ninth Circuit on selective prosecution; however, I believe Ms. O'Connor misspoke in suggesting that *Bourgeois* doesn't deal with the discovery issue. *Bourgeois* deals squarely with the question of how much of a showing must Defense Counsel make, not before claim is to be sustained, but before discovery need even be provided, and in answering that question, the Ninth Circuit in *Bourgeois* made clear that it's a heavy burden and a high threshold that must be overcome before discovery need even be produced by the Government. And we submit, your Honor, that they set that high threshold for good reasons, because the Court recognized that we shouldn't tread lightly in this area based on mere speculation, based

on general observations or broad pronouncements by Defense Counsel. In setting the high threshold in *Bourgeois*, the Court similarly recognized that there are two separate and independent parts to the equation—not just discriminatory effect, and that's the numbers part of the equation that needs to be shown, but the Court recognized separate and apart from discriminatory effect is the requirement of the showing of discriminatory intent, and that's where we believe, your Honor, above and beyond anything else, the showing that we have here is inadequate, because now, in the face of numbers alone, we have not a silent record as we did when we were previously before your, now we have a record replete with explanations—declarations as to the Government's motive in prosecuting, declarations which, as I indicated, have not been refuted, statements which have not been claimed to lack credibility. In response to those declarations, all we have from the Defense camp is general pronouncements based on numbers, pronouncements, which again, have no indication of anybody in our office who has a race based motive in prosecuting cases.

The only three cases addressing some type—sanctioning some type of discriminatory—some type of selective prosecution claim, make clear that that second part of the equation, the "why" part, the motive part, is equally important. If fact, in the *Steele* case, the last Ninth Circuit case over two decades ago to sanction a selective prosecution claim, the Court noted that the Government had admitted that they prosecute only hardcore census protesters, so the Government was admitting that they selected out the protesters to prosecute, and in that case, the Government refused to provide any explanation for why they selected those people for prosecution. So, there we had the Government's admission, coupled with no explanation to the contrary. Similarly, in the *Gordon* case, which Ms. O'Connor alluded to, a voting fraud prosecution, we had equally clear evidence of discriminatory motive

and intent. In that case, Defense submitted declaration—a statement from a representative of the Department of Justice, in which that representative explained the investigations as follows: the representative in the case said that the investigations were quote, “part of a new policy brought on by the arrogance of black leaders”—obviously, an unfortunate view at that time of why we prosecute cases, but again, your Honor, in that case, there was clear evidence of discriminatory intent by the Government. Again, it was not numbers alone.

And finally, in the *Adams* case, the Sixth Circuit case the Defense Counsel has also relied on, that was a case involving a false tax—a tax return prosecution. Defense Counsel submitted an affidavit again of a Government employee, saying that that employee believed that the prosecution was motivated by retaliation against the defendant, an individual who had sued the EEOC. So again, we had evidence in that case of discriminatory motive on the part of the Government. In contrast, there’s simply no evidence of race-based decision making here. In fact, what we have here is similar to the *Wilson* case, from the Ninth Circuit, a 1981 decision. In *Wilson*, the Ninth Circuit rejected a selective prosecution claim, in spite of the fact that the defendants had shown and the Court found that there was some evidence suggesting that all tax protestors are prosecuted, and that the IRS hadn’t, in recent years, prosecuted any non-protestors. So, we have compelling evidence of numbers in that case, even more compelling, I’d submit, than we have here. The Court, however, held that the defendants quote:

“do not prevail, however, because they’ve not introduced evidence which convincingly shows that they were prosecuted because of their exercise of constitutional rights”.

The Court said all prosecutions are to some degree selective. Unless one can show that the tax laws are

deployed against protestors in retaliation for the exercise of their rights, a selective prosecution argument will fail. So again, the Ninth Circuit has told us that numbers alone are not going to be sufficient for either a claim on the merits or for discovery.

Beyond that, your Honor, we submit that on the discriminatory effect part of the equation, that their claims similarly have to fail because they haven’t identified similarly situated individuals who haven’t been prosecuted, and that’s part and parcel of discriminatory effect. While they’ve tried to show instances where white narcotics users were white, small time dealers, were prosecuted in the state system, we submit that they failed to show individuals who, at the same level of offense—the same level offenders with priors and with quantities of this nature that the Federal Government had failed to prosecute, and that by definition means, that they failed to show similarly situated individuals that we haven’t prosecuted.

We also submit that the numbers that they have provided show not some type of general prosecution of black individuals. They’ve identified twenty-four cases. Last time we had twenty-four in contrast to zero, now we have twenty-four in contrast to eleven, and even if it were twenty-four in contrast to zero, twenty-four can’t be statistically significant. And, as we indicated to the Court, there are race-neutral explanations for even those twenty-four cases. The socioeconomic factors that I eluded to at the outset. To the extent, your Honor, their information is vague; they have the opportunity and they have the burden to gather more information. If they’re looking for information from the state system as one of the Defense Counsel referred to in passing, they have as much opportunity as the Government possibly could be subpoena information from the state system. We’ve tried to meet the Court halfway; we’ve tried to address what we believe to be the most troubling of the concerns identified at the prior hearing, namely the “why” question.

And, we submit, given the landscape and given the record that we now have before your Honor, that there's simply no showing commensurate with what the Ninth Circuit and with what the case law requires. Accordingly, we would ask that your Honor join with Judge Letts and Judge Real, who on identical factual showings similarly denied requests for discovery, and we'd ask that your Honor join as well with District Court Judges out of other districts. It's my understanding that this exact type of claim, not surprisingly, has been raised in other districts, not surprisingly because of the socioeconomic factors based on the areas where crack cocaine is prevalent, and I'm not aware, having checked with the other Ninth Circuit Appellate Chiefs in all of the offices from the Ninth Circuit, I'm not aware of a single instance where discovery has been ordered beyond what the Government has provided in this case. So we'd ask, your Honor, based on the case law, to find that there is simply no requirement that the Government provide anything further.

I don't know if I've addressed all of the questions that you posed over the course of the proceeding today, if there are any other questions, I would gladly address them.

THE COURT: I have no additional questions. I would ask the Defendants though, would you identify and then—I believe that I have reviewed everything that the Government has provided. Would you identify for me the additional declarations that you've provided—any additional filings that have been provided to the Court. I just want to make sure that I have reviewed everything that the Defendants have provided. If you could give me the date of the filing and the description of what it is. As Counsel indicated, we started out with this motion same weeks ago, I guess months ago now, and since that time, there have been additional filings, there have been additional hearing dates, but for various reasons, the case has had to be continued, so I just want to make sure I've reviewed everything that's been filed.

MR. REED: Your Honor, the only thing—David Reed on behalf of Christopher Armstrong—is the November 9, 1992 joinder in the selective enforcement discovery motion and a supplemental declaration by myself, and I lodged that news article today; that's all I've filed.

THE COURT: All right. Mr. Lannen, have you filed anything other than a joinder that just indicates that you are joining?

MR. LANNEN: Your Honor, I don't have a copy of mine, but I did file a joinder with a supplemental declaration. Is that what the Court has?

THE COURT: I don't have it before me at the moment, but—

MR. LANNEN: It is in the court file, because I actually checked it. I lent my copy of—my stamped copy—but there's a joinder with a supplemental declaration which concerns the facts are related to Mr. Hampton.

THE COURT: Do you recall when it was filed?

MR. LANNEN: I don't, your Honor, but I can get it in a minute.

THE COURT: All right. Ms. O'Connor, you field the original motion in the case, and—

MS. O'CONNOR: Yes, your Honor. I filed an opposition to the motion for reconsideration on October 5th, and included a declaration from Marla Beller, the paralegal who had done the initial list of cases, and I just want to address Mr. Krinsky's argument on that. You can't compare our twenty-four to the eleven that are now pending, because as was clearly indicated, are list—we tried to break this down into a discrete group that could be analyzed statistically correct. Those were cases that were closed by our office during 1991. The four hispanic clients that they identified were either open cases or closed in some other year. It was clear that that's what our initial list provided. Now, were we to update to this date, I think we would come up with similar results consistent with the *Los*

Angeles Times information from the sentencing commission—ninety-two percent black defendants in crack cases this years.

THE COURT: I haven't read the *Times* article yet, but does Counsel believe that it addresses the question that the Court stated and the Government's Counsel responded to it? Is it that there is information that suggests that the only person involved in crack cocaine are African Americans or blacks, or is the percentage of African Americans and blacks so high that the rest would just be minimum? Did the article address that or—

MS. O'CONNOR: The article does address it somewhat, and I think presents conflicting experts which one would assume both sides could come up with experts analyzing the drug problem.

THE COURT: That was going to be the next inquiry. I just assumed that none of the Defense Counsel have attempted to obtain, or have obtained, any expert testimony that would suggest whether the nature of the—the concern that the Court expressed—if that is true.

MS. O'CONNOR: That's correct, your Honor. And, I also wanted to comment that the fact that we haven't been able to identify a Government agent willing to say, "Yes, I was acting on the basis of race" doesn't mean it doesn't exist, and—

THE COURT: I'm not sure that we'd find anybody that would say that.

MS. O'CONNOR: I doubt that we would. Now, luckily in those other cases, they were able to come up with those individuals who clearly had improper motives. There is case law stating though that the result—like *Batson*—the result can be circumstantial evidence of intent somewhere along the line, and at this point we think that we have shown a colorable basis for discovery.

THE COURT: Any of the other Defense Counsel—I'm just inquiring about things that have been filed that maybe

the Court hasn't reviewed—so if anybody else has filed anything in the form of a declaration or a opposition, or anything of that type, please identify.

MR. WALSH: On behalf of Robert Rozelle, on August 13, there was just a one-page joinder motion filed.

THE COURT: And it was just a joinder, no declaration attached?

MR. WALSH: That's correct.

THE COURT: Okay.

MR. BORTMAN: Your Honor, as you know, Mr. Mack was arraigned very recently; a matter of days ago. I am aware of the great confidence of my Co-counsel, and as I indicated before, I would join in their motions and won't be adding anything else.

THE COURT: Now, as far as the Government's filings are concerned, there were of course the initial opposition to the discovery request. The Government's motion for reconsideration, and the Government's supplemental declaration. Is that it?

MR. CHO: That was all, your Honor.

THE COURT: Okay. All right, I'm going to deem the matter submitted at this point just for purposes of reviewing some of the cases that have been addressed today and looking at the declarations and so forth if I've not reviewed them, and if I have, just to refresh my recollection, and then I will issue an order. Mr. Levario indicated to me that there's an interest in changing the trial date in this case, and advancing it—something that doesn't happen very often. I didn't expect that everyone would be in agreement to advancing, but he tells me you are. Is it January 5?

MR. LANNEN: Yes, your Honor.

THE COURT: As long as that date is acceptable to all of the Defense Counsel and the Government, then he tells me that it's available on our calendar, so I would change the date to that date. Do all Defense Counsel agree to January 5?

(Affirmative response.)

THE COURT: And, how about the Government?

MR. CHO: No objections, your Honor.

THE COURT: Okay. The trial date at this point—we'll change the trial date so that it will be January 5.

MR. LANNEN: I take it, your Honor, that that is subject—if the Court were to not—were to deny the reconsideration, I would imagine that the Government would need time. I'm just—

THE COURT: Well, I'll wait to see what happens. If I deny the motion, then the Government will advise the Court as to whether it's inclined to provide more information, or whether it feels at this point that it shouldn't have to do so, and then what would be the next step for the Government to take. If I grant the motion, then—if I grant the motion—I said it backwards—if I grant the motion, then I think the Government will advise the Court as to what their position might be. If I deny the motion, and I'm not talking about the discovery motion, we'd be on track. So, I think that that's something I can't address; I'll just wait and see.

MR. REED: Your Honor, just in case this comes up down the road, and the Ninth Circuit hears this case, I want the Ninth Circuit to know that we were willing to compromise with the Government to come down on the years—to come down on the nature of the items that were requested.

THE COURT: It would be nice if the issue was that simple, but I doubt if that would really make a difference. All right then, I'll deem the matter submitted. We do have the trial date now, the 5th, depending upon how the Court rules on this, that might change, but I'm sure that the appropriate side would bring it to the Court's attention if there is a need now to further discuss the trial dates.

(Proceedings concluded.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Transcriber

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Harsher Crack Sentences Criticized as Racial Inequity

■ Narcotics: Mandatory penalties are unfair to blacks, critics say. Terms are stiffer for smokable cocaine.

By JIM NEWTON
Times Staff Writer

Since late 1991, Curtis Harding has been locked in federal prison, where he and the other crack criminals jammed into the cells around him have two things in common: They are being punished far more severely than if they had been caught with powder cocaine, and almost every single one of them is black.

"There's no whites here doing time for crack. It's all blacks," Harding said in a recent telephone interview from the Federal Correctional Institution in San Francisco, Calif. "It's supposed to be equal, but how is that equal?"

There are many whites who are serving federal time for cocaine offenses. The difference is that cocaine criminals who are white almost always have violated powder cocaine laws. These crimes carry much shorter sentences even though powder cocaine is easily converted into crack.

It is hardly a surprise that Harding complains about federal drug laws. But his criticisms are shared by a growing chorus of legal scholars and defense lawyers, and are reflected in major calls for congressional action and in a spate of appeals filed by federal public defenders across the country. Many critics charge that federal crack laws are subjecting thousands of African-Americans to unfairly long prison sentences, while treating whites with comparative leniency.

Preliminary studies suggest that more than 90% of all federal crack defendants are black, and many are serving mandatory prison sentences of five years or more for as little as five grams—an amount that barely raises an eyebrow in powder cocaine cases and warrants no mandatory prison sentence.

At the same time, most drug experts, prosecutors and defense attorneys believe that crack, while chemically indistinguishable from powder cocaine, is far more addictive and socially destructive because of the way it is marketed and ingested. They acknowledge that crack laws have punished blacks disproportionately, but they say differentiating between crack and powder is needed in order to thwart an epidemic drug crisis.

"This form of cocaine is extremely dangerous," said Dr. Robert Byck, a Yale University professor and nationally recognized cocaine expert. "The smokable cocaine habit is much more dangerous than the inhaled cocaine habit."

Dr. Ronald K. Siegel, a psychopharmacologist at UCLA and one of the first medical experts to document the crack cocaine phenomenon, agrees that smoking crack is dangerous. But he calls the federal sentencing laws, which equate each gram of crack with 100 grams of powder, "arbitrary and capricious, and medically and scientifically wrong."

Siegel said smokable cocaine first appeared in the United States in 1885 with the introduction of corn leaf cigars and cigarettes. Freebase, a powerful form of smokable cocaine, emerged almost a century later, and the first record of emergency room admission was in 1974 at UCLA. In those days, freebase was mostly abused by whites.

Freebase is highly addictive, euphoric and dangerous to health because it is, which is flammable, is used to produce it. Still, freebase initially attracted little mainstream attention, and Congress took no action to punish freebase smokers more severely than cocaine smokers.

It was not until 1985 that crack—

manufactured by a simple technique that eliminated the need for other—found its way into the inner city. Congress then stepped in, holding hearings that were marked by their pitched rhetoric.

"The drug epidemic is as dangerous, if not even more so, than any other terrorist that this nation faces," Sen. Alfonse M. D'Amato (R-N.Y.) said during those hearings. "Terror is being spread in our neighborhoods, in the homes and throughout this great nation of ours."

Under the sentencing laws that Congress enacted, every gram of crack was considered the equivalent of 100 grams of powder cocaine.

As a result, a defendant convicted of intending to sell five grams of crack must be sentenced to at least five years in prison, regardless of extenuating circumstances. To trigger the same minimum for a powder defendant, the criminal would have to be convicted of trying to sell 500 grams.

Why did Congress consider crack 100 times more severe than powder? Why not 10 times or 50 times—or 500 times, for that matter?

"The number is arbitrary," said Byck, who testified during the 1986 Senate crack hearings. "It neither makes sense nor doesn't make sense. It's just a number."

Try telling that to Harding. For him, it is the difference between two years in prison and 10.

Harding, who pleaded guilty, was convicted of possessing 89.1 grams of crack with the intent to sell it. Even though the judge tried to impose a lighter sentence, he ended up giving Harding 10 years, the mandatory minimum for possession of 50 grams or more. Had Harding pleaded guilty to possessing the same amount of powder cocaine, there would have been no mandatory minimum, and Harding probably would have spent less than two years in prison.

Meanwhile, powder cocaine offenders receive comparatively easy

CRACKING

Vincent D. Bonito possessed 2,482 grams of powdered cocaine when he was arrested at Los Angeles International Airport on Nov. 14, 1990. Bonito's cocaine easily could have been converted into 2,500 grams of crack. All it would have taken is some baking soda and water.

Bonito, who is white, was sentenced to seven years in prison—less time than Harding got even though Bonito possessed 25 times as much cocaine.

The largest-scale cocaine traffickers—Colombian cartel leaders, for instance—usually smuggle powder cocaine, not crack. Crack dealers are more likely to be street-level drug pushers than big-time cartel bosses. And they are much more likely to be black.

Studies on the subject are inconclusive, but what is obvious is that a defendant in a federal courtroom is generally borne out by these statistics that are available.

For example:

• The Federal Public Defender Service in Los Angeles concluded 23 crack cases in 1991. All 23 defendants were black.

• In the Northern District of Georgia, 10 defendants were charged with crack-related crimes from early 1990 through Sept. 30, 1991. Sixty-nine were black or Latino.

Nationally, figures showing the racial breakdown of federal drug offenders show that from April 1 to July 31, 1991, crack offenders were sentenced in federal courts across the United States. More than 92% were black.

The same study, conducted by the U.S. Sentencing Commission, found that 45% of defendants sentenced for powder cocaine were white—compared to 4.7% sentenced in crack cases.

Even supporters of the sentencing law acknowledge that such numbers are disturbing, but many experts stress that smoking crack is a particularly destructive poison with serious social consequences—many of which are deeply felt in black, inner-city areas.

It is unfortunate that principally black are out in the streets selling this stuff, and they're getting caught," said Rep. E. Clay Shaw, a Florida Republican who has long backed tough drug laws. But the population of the

community that is principally victimized is also black. We're trying to get to that and save these communities."

Supporters of the stronger sentences also point out there is a broad medical consensus that smoking crack is more addictive than smoking cocaine. Because it is smoked, crack goes to the brain more quickly than powder. That causes a stronger, shorter high, but it also causes a sharper fall when the drug wears off, leaving the user with an intense craving for more.

Although both crack and powder are cocaine, some experts note that there is legal precedent for regulating drugs differently when they have the same active ingredients. As Byck notes, beer and wine often are regulated differently than Scotch or vodka, even though all these beverages impair users because they contain alcohol.

Critics of the crack sentencing laws reject that comparison.

"When a Highway Patrol officer pulls you over, he doesn't care whether you've been drinking Jack Daniels or beer," said Suzanne Hoshimi, a federal public defender in Atlanta who has challenged the crack sentencing law in federal court. "He only cares whether you're drunk."

A better analogy to the crack-powder issue, experts say, is the sentencing approach to methamphetamine traffickers. Methamphetamine, a powerful stimulant, usually is consumed as a powder, but it can be converted into a smokable version known as ice.

Smoking ice has a more powerful effect on the user and is considered more addictive and more dangerous than snorting methamphetamine for the same reason: that smoking crack produces stronger results than snorting cocaine.

But for sentencing purposes, one gram of ice is treated as 10 grams of methamphetamine, while crack cocaine is considered the equivalent of 100 grams of powder. Also, even though the effects of smoking ice are stronger than those associated with smoking crack, ice is considered half as serious as crack for sentencing purposes.

Finally, ice dealers and methamphetamine dealers are almost exclusively white, so a disparity in the sentencing does not result in defendants of one race doing more prison time than those of

another.

These are important distinctions," said David S. McLane, the deputy federal public defender in Los Angeles who represents Harding. "Maybe I'm cynical, but I think that if you saw a lot of young white males getting five- and 10-year minimums for dealing powder cocaine, you'd have a lot more reaction."

McLane and his colleagues in federal public defender offices across the country have argued that the appellate courts should overturn the congressionally approved sentencing distinction. The federal courts have repeatedly rejected that argument, turning back challenges from California, Nevada and Georgia, among other places.

The only high-level victory for critics of crack sentencing laws has been in the Minnesota Supreme Court, which overturned a state law that punished crack offenders more severely than powder criminals.

The litany of failed federal challenges has convinced some critics of the sentencing law that they might have better success if they took their case to Congress rather than the courts. Shaw and some other congressional insiders, however, see little appetite in Washington for weakening federal crack laws.

"There's going to be political fallout for cutting back on sentencing requirements for drug dealing," Shaw said. "That's exactly an uphill fight."

Still, some observers note that a new Congress is about to convene, one that will have many new members, including many minorities.

"A law that is so racially discriminatory must be re-examined if we are to be true to our concept of equal justice," said Eric S. Stedding, president of the Washington-based Original Justice Policy Foundation. "The question is whether this new Congress will have an appetite for it."

Crack: The Racial Divide

No drug is more closely associated with race than crack cocaine. Those convicted of powdered cocaine offenses are often Anglo, but crack offenders—who face far stiffer sentences—are overwhelmingly black. Below, results of study of all drug offenders sentenced in federal court from April 1, 1990 to July 31, 1992.

POWDER COCAINE
Anglo: 769 (45.2%)

MONDAY, NOVEMBER 23, 1992, LOS ANGELES TIMES, PART A
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FAX page 02

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MONDAY, NOVEMBER 13, 1992 LOS ANGELES TIMES, PART A
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000138095 PAGE 1
FAX page 2

Block: 500 (29.74)
Letter: 392 (23.34)
Other: 30 (1.84)

CRACK COCAINE
Angle: 29 (4.44)
Block: 578 (92.44)
Letter: 14 (2.64)
Other: 1 (0.24)

Drug offenders in federal court receive sentences based on the type and quantity of the drug and on such factors as the defendant's criminal history. For sentencing purposes, each gram of crack cocaine is the equivalent of 100 grams of the powdered form of the drug. Here is a comparison of those sentences for hypothetical crack and powder cocaine defendants.

CASE 1: A suspect is caught with 70 grams of crack and is convicted of possessing the drug with intent to sell it. The suspect has no prior criminal history.

Prison sentence: 121-151 months.

CASE 2: A suspect is charged and convicted of possession with intent to sell 70 grams of powdered cocaine. The suspect has no prior criminal history.

Prison sentence: 21-27 months.

Source: U.S. Sentencing Commission, sentencing data files; also U.S. Sentencing Commission Guidelines Manual [1992].

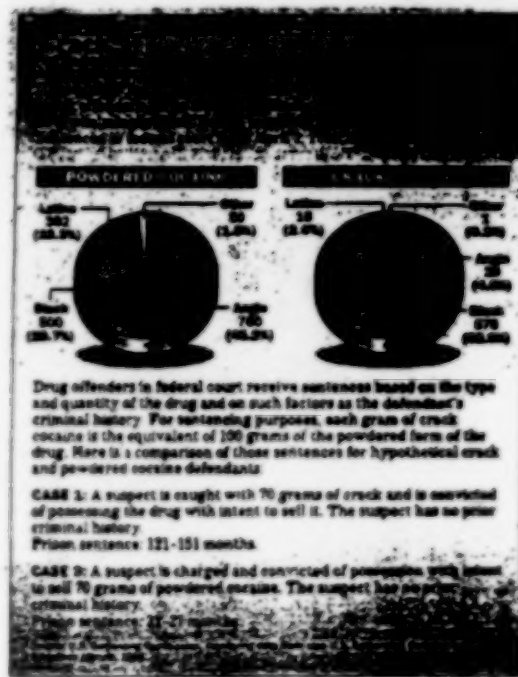
Chart:
Crack, The Racial Divide
Los Angeles Times

Type of Material Infobox

Descriptives
DRUG ABUSE
COCAINE
SENTENCING
CRIMINAL LAW
CRIMINAL JUSTICE
RACIAL DISCRIMINATION
BLACKS - UNITED STATES
CRIME STATISTICS

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Prison sentence: 21-27 months.

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA CRIMINAL MINUTES - GENERAL

9201848

Case No. CR92-336 CBM

Date 12/29/92

DOCKET ENTRY The Government's motion for reconsideration of Court's ruling is denied (CBM)

RECEIVED

1992

U.S. ATTORNEY
CRIMINAL DOCKETS

PRESENT NOW CONSUELO B. MARSHALL JUDGE

Joseph M. LEVATTO
Deputy Clerk

n/a
Court Reporter

n/a
Asst. U.S. Attorney

U.S.A. - DEFENDANTS LISTED BELOW:

ATTORNEYS FOR DEFENDANTS

DEFENDANT	ATTORNEY	PRESENT	CRIMINAL	RECEIVED
CHRISTOPHER ARMSTRONG, et al	n/a			

PROCEEDINGS:

DEC 29 1992
Joseph M. Levatto
Deputy Clerk

YES FORM 6
1 - GEN

D - 34

Initials of Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CRIMINAL MINUTES - GENERAL

Case No. CR92-33A CBMDate 1/5/93

DOCKET ENTRY: Motion of defts to dismiss indictment is granted. Govt's motion to stay dismissal for 48 hours is granted. Cont'd to 1/8/93, 10AM as to defts Martin, Armstrong & Roselle for a status conf & bail motions. Ct orders that Mack shall remain on bond & upon same conditions of release (CBM)

PRESENT: HON. Joseph M. Levario JUDGE: Laurence Cho
Deputy Clerk: Esther Mays Court Reporter: Am. U. & A.

U. S. A. - (DEFENDANTS LISTED BELOW): ATTORNEYS FOR DEFENDANTS

(1) Christopher Armstrong, not pres. David Reed, pres. apptd.
— present — X — custody — bond — O/R — present — appointed — retained

(2) Roselle, pres. custody IN T. Lannen for J. Walsh
— present — custody — bond — O/R — present — appointed — retained

(3) Sharon Hampton, pres. custody O Timothy Lannen, pres. apptd.
— present — custody — bond — O/R — present — appointed — retained

(4) Roselle Mack, pres. bond IN David Bortman, pres. apptd.
— present — custody — bond — O/R — present — appointed — retained

(5) Shelton A. Martin, pres. custody Y Barbara O'Connor, pres. apptd.
— present — custody — bond — O/R — present — appointed — retained

PROCEEDINGS



MINUTES FORM 6
CRIM - GEN

D - 34

Initialed Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CRIMINAL MINUTES - GENERAL

Case No. CR92-33A CBMDate 1/19/93

DOCKET ENTRY: Motion of govt's chal to dismiss indictment as to deft Armstrong granted. Def't's motion to set bail denied. Court finds that deft is a danger to the community. Court orders that deft remain detained. Exhibits 1, 2, 3, 3A & 4 are admitted into evidence (CBM)

RECEIVED

JAN 21 1993

U. S. ATTORNEY
CENTRAL DISTRICT OF CALIF.

PRESENT: HON. Joseph M. Levario JUDGE: Laurence Cho
Deputy Clerk: Esther Mays Court Reporter: Am. U. & A.

U. S. A. - (DEFENDANTS LISTED BELOW): ATTORNEYS FOR DEFENDANTS

(1) Christopher Armstrong, pres custody (1) David Reed, pres. apptd.
— present — custody — bond — O/R — present — appointed — retained

(2) — present — custody — bond — O/R — present — appointed — retained

(3) — present — custody — bond — O/R — present — appointed — retained

(4) — present — custody — bond — O/R — present — appointed — retained

(5) — present — custody — bond — O/R — present — appointed — retained

PROCEEDINGS

MINUTES FORM 6
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Initialed Deputy Clerk

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CR92-336-CBM
Los Angeles, California

UNITED STATES OF AMERICA, *Plaintiff,*

v.

CHRISTOPHER LEE ARMSTRONG, ROBERT ROZELLE,
AARON HAMPTON, FREDDIE MACK, SHELTON AUNTWAN
MARTIN, AKA "PSYCHO," *Defendants.*

Tuesday, January 5, 1993
9:55 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CONSUELO B.
MARSHALL
UNITED STATES DISTRICT JUDGE

APPEARANCES:	LAWRENCE CHO, ESQ.
For the Plaintiff:	Assistant United States
LOURDES G. BAIRD, ESQ.	Attorney
United States Attorney	312 N. Spring Street
ROBERT L. BROSIO, ESQ.	Los Angeles, California
Assistant United States	90012
Attorney	
Chief, Criminal Division	

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

For Defendant Armstrong:
DAVID REED, ESQ.

For Defendant Rozelle
and Defendant Hampton:
TIMOTHY LANNEN, ESQ.

For Defendant Mack:
DAVID BORTMAN, ESQ.

For Defendant Martin:
BARBARA O'CONNOR,
ESQ.

Deputy Federal Public
Defender
312 N. Spring Street
Los Angeles, California
90012

Court Recorder:
Esther Mays
United States District
Court
312 N. Spring Street
Room 442A
Los Angeles, California
90012

Transcriber:
Mary Lou Lohr
Echo Reporting
7046 Enders Avenue
San Diego, California
92122
(619) 453-3325

LOS ANGELES, CALIFORNIA
TUESDAY, JANUARY 5, 1993 9:55 A.M.

(Call to order of the Court.)

MR. CHO: Good morning, your Honor. Lawrence Cho on behalf of the United States.

MR. REED: Good morning, your Honor. David Reed on behalf of Christopher Armstrong. I understand that he's sick in the hospital with the chicken pox. He's not present in court.

MS. O'CONNOR: Good morning, your Honor. Barbara O'Connor appearing on behalf of Shelton Auntwan Martin who is present in court.

MR. BORTMAN: Good morning, your Honor. Dave Bortman on behalf of Freddie Mack.

MR. LANNEN: Good morning, your Honor. Timothy Lannen appearing on behalf of Aaron Hampton who's

present, and also standing in for Joseph Walsh who's in trial for Robert Rozelle.

THE COURT: And is he present as well?

MR. LANNEN: Who is also present, your Honor.

THE COURT: And is Mr. Mack present as well?

MR. BORTMAN: He is, your Honor.

THE COURT: Now, as to Mr. Armstrong, Mr. Reed, since Mr. Armstrong is not present today because he cannot be here because of illness, what is your position as to whether the Court should proceed without him?

MR. REED: We'd like the Court to proceed without him. We'd waive his appearance, your Honor.

THE COURT: He does not have a waiver on file, however.

MR. REED: No, he doesn't.

THE COURT: What the Court intends to do today—today is the day that we're to commence trial in the case.

The Court recently heard a motion for reconsideration, and I have, through the clerk, indicated to the parties that the motion is denied, and I will make some statements for the record concerning the motion, and at that point, then, I will hear from the parties as to whether you are now ready to proceed to trial. Even if you were, you probably couldn't go forward because one Defendant is ill and can't be here, so it probably would result in a continuance, but that will be discussed with the Court, and the Court will then issue a ruling.

So that's what I intend to do today. It is a proceeding. Defendants have a right to be present. Mr. Armstrong does not have a waiver on file. His appearance probably requires a personal waiver rather than having one by counsel, but I think we're in a situation where some decisions have to be made with the case.

Even if the Court were to not issue its rulings on the motion for reconsideration, the case would still have to be continued, and I assume it would be Mr. Armstrong's

client that would make that request, so having said that I think that we'll proceed in the manner in which the Court has indicated.

As far as the motion for reconsideration is concerned, the Court did communicate through the clerk that the motion is denied.

The previous findings made by the Court remain in full force and effect, and I won't go over those again, but will specifically find that the Defendants have made a sufficient showing to require the Government to produce the evidence that the Court ordered be produced.

The statistical data provided by the Defendant raises a question about the motivation of the Government which could be satisfied by the Government disclosing its criteria, if there is any criteria, for bringing this case and others like it in Federal court.

Without the criteria, the statistical data is evidence and does suggest that the decision to prosecute in Federal court could be motivated by race.

Without expert testimony, this Court cannot conclude that the Defendants' evidence is explained by social phenomena.

The executive branch has a responsibility to dissuade public opinion that its decisions to prosecute or where to prosecute are not motivated by improper reasons such as race, and the evidence of who was prosecuted and why those persons were prosecuted and where those persons were prosecuted is within the peculiar knowledge of the Government and therefore, as the Court indicated at the previous hearing, it would be this Court's position that it is the Government that would have to provide that evidence so that Defendants could analyze it and decide if there is any basis for filing a motion to dismiss.

Therefore, the Court's previous ruling remains in full force and effect. The Court still requires that the Government produce that information that the Court had previously ordered.

If there are any questions or additional findings that either side would request the Court to make for purposes of review, the you may make that request.

I should say, if I didn't, on the record that I have now reviewed all of the evidence offered by all parties in the case.

At the last hearing, if you'll recall, there were—there was some evidence. One piece of evidence was the newspaper article that had been offered both by—by two of the Defendants, and the Court had not reviewed that article at the time of the hearing; however, I didn't find anything in the article to really be persuasive, but I did read it since it was offered to the Court.

I have now read all of the evidence offered by all parties in the case.

Does the Government require—request that the Court say anything specific other than what I've said on the record?

MR. CHO: No, your Honor.

THE COURT: Okay. How about the Defense?

MR. REED: Your Honor, could we just have a second?

THE COURT: Yes.

(Pause to confer.)

MR. BORTMAN: Submitted, your Honor.

THE COURT: All right. The Court having made its findings, now I'll hear from counsel relative to whether the case should proceed to trial as set today, at least as to those Defendants who are here and available to go, or whether there is a request for continuance.

MR. CHO: Your Honor, if I may. The first question I have, though, is concerning Mr. Armstrong's appearance.

I am somewhat concerned that, as the Court indicated, a personal waiver may be necessary for this hearing. I'm particularly concerned because I'm going to ask on behalf of the Government that the Court dismiss the case so that we can have an appealable issue and stay execution of the

dismissal for 48 hours so we can formally file our notice of appeal up in the Ninth Circuit.

But again I have some reticence about that because obviously that would be a decision and an order that would greatly affect what happens with this case in the future, and without Mr. Armstrong being present, I have some concerns that that may raise additional problems down the line, either on appeal or perhaps on collateral attack.

I'm not quite sure what I could suggest to the Court. Perhaps if a personal waiver could be subsequently filed, that'll probably solve everything. If not, then perhaps a formal ruling by the Court as to what should happen with this case may be delayed until Mr. Armstrong can make a personal appearance or until a waiver could be filed.

Aside from that, your Honor, again the Government would request that the Court dismiss the indictment so that we can appeal this to the Ninth Circuit and do so on an expedited basis.

THE COURT: All right, Defense Counsel—Mr. Reed, you may be heard first. The Court already expressed its concern that, even if the Court didn't have before it this motion for reconsideration, today is the day set for trial. One Defendant is ill and can't be here. I assume what would happen is that Defendant's counsel would appear and would make a motion for a continuance, even though that Defendant is not present.

What would probably happen, though, is the continuance would only be for a period of time until the Defendant could be with us again, is well and able to be here, so in this case that might be a week or maybe something even less.

The other possibility is actually having Mr. Armstrong execute a waiver of appearance, if he's inclined to do so.

Then the Court would have to give counsel an opportunity to get such a waiver executed or not be able to do so and then return to court and report on that.

I'll hear from you first. I don't know what your motion would be this morning, whether you would be just making a motion to continue the trial until your client is well enough to proceed and whether the other Defendants then would ask to go forward or also ask for a continuance or would concur in the Government's request that the indictment be dismissed. I'm not sure what your position is.

MR. REED: Your Honor, yes, I would have—I would be asking for a continuance had Mr. Armstrong been here, and I think perhaps the wisest way to proceed is, instead of relying on Mr. Armstrong executing a personal appearance waiver in the future nunc pro tunc for toady, which I'm not sure he would execute, I think the wisest thing to do at this juncture is perhaps to put the case over for a few days.

We were intending to put the case on for bail motions' cause the Government has indicated to us before coming into court that they intended to appeal this.

We wanted the Court to hear bail motions so that the Defendants wouldn't be in custody during the pendency of the appeal.

Perhaps it would be wise to put the case over to perhaps this Friday. By that time, Mr. Armstrong certainly—or not certainly but probably would be able to be with us on Friday. We can go through the procedure that the Government wishes to go through in terms of the dismissal with the Defendant being present, or the request for the dismissal, and at the same time hear bail motions.

I just offer that as a suggestion.

THE COURT: If Mr. Armstrong were here today, would you be requesting a continuance, or would you be asking to go forward, proceed to trial, or would you be asking that the Court dismiss the case?

I assume that the basis for the Government's dismissal is that the Government at this point will not comply with the Court's order; therefore, the information that the Court

ordered wouldn't be available to the Defense; therefore, the Defense wouldn't be able to pursue the motions that you wish to pursue if the evidence had been given to you, so—

MR. REED: Yes, your Honor.

THE COURT: What would Defendant Armstrong's position be? Would you be asking that the trial be continued or that the case be dismissed?

MR. REED: I'd ask that the case be dismissed. The Government has not complied with the Court's order, and we would certainly, on behalf of Mr. Armstrong, ask that the case be dismissed at this point.

If the Court was not inclined to dismiss the case, then certainly we'd be asking for a continuance of the trial so that eventually, if the appellate court felt it appropriate, obtain the discovery that we need to make the discriminatory enforcement motion down the road.

So in any case we wouldn't be asking to go to trial today.

THE COURT: And you would then not be objecting to the Government's request that the case be dismissed.

MR. REED: Well, I'm not sure about that because frankly at this point I've had a lot of cases that have gone up on interlocutory appeal and I don't recall the Government coming in and dismissing the case in order for it procedurally to go up on interlocutory appeal, so I'm not sure, to be frank with the Court, what the Government is doing in terms of requesting a dismissal so that they can go up on appeal at this point, and I'd like to have a chance to do some research in that area.

THE COURT: Could I hear from other counsel, please?

MS. O'CONNOR: Good morning, your Honor. We were ready for trial today, but obviously would move for dismissal of the case based on the Government's failure to comply as well.

I think the Court is aware that I had filed two late motions last week; namely, a motion to suppress based on

an arrest report that I received late and also a motion for severance based on primarily the Government's refusal to allow us to have a bench trial and to allow Mr. Martin to waive jury in this case.

I had also spoken to Mr. Levario yesterday about putting on a bail hearing for Mr. Martin as quickly as possible. Certainly Friday would be agreeable. His uncle is willing to act as a surety, I believe, and could be present on Friday—was unable to be here today.

Again, I think we're all a little confused by the Government's posture, but certainly happy to have the case dismissed should it go that way.

THE COURT: Well, it's kind of interesting. The Government would ask the Court to dismiss the case, and normally you'd expect that Defendants wouldn't oppose that, but yet the Defendants in this case aren't quite sure what their position might be in that regard, so I'm not sure what you're saying. At this point, are you opposing the Government's request to dismiss and, like Mr. Reed, asking for additional time so that you can do some research on your own as to what effect that might have on the case, or are you not opposing the motion so that, if the Court were inclined to grant that motion, then your client would be—the case would be dismissed against him?

MS. O'CONNOR: I would agree with that, your Honor.

THE COURT: So you are not opposing—

MS. O'CONNOR: No.

THE COURT: —the Government's motion to dismiss.

MS. O'CONNOR: No, your Honor.

THE COURT: Could I hear from—

MR. REED: Your Honor, may I renew my comments to the Court? At this point, I've consulted with co-counsel briefly, and we would not have any opposition to the Government moving to dismiss at this time, and we would not oppose that on behalf of Mr. Armstrong.

THE COURT: All right.

MR. BORTMAN: That would be Mr. Mack's position, too, your Honor.

MR. LANNEN: As to Mr. Hampton, your Honor, we would—normally would request a continuance based on the Court's order for a long enough period of time for the Government to comply with the order; otherwise, we would be ready for trial, and if the Government is—if their stance is that they are not going to comply with the Court's order, then we would not oppose and would move for dismissal as to Mr. Hampton.

THE COURT: Let me just hear from Government's counsel at least as to Defendants who are here. I think that Mr. Armstrong needs to be here before the Court can make any final disposition in this case, but as to those who are here, the Government can be heard.

As I understand Counsel, they don't oppose the Government's motion to dismiss, so it sounds like, if the Court were ruling at this time, the Court would be granting that motion.

Government wish to have anything else to say on the record?

MR. CHO: Let me just make the record clear, your Honor. What is going on is the Court has made its ruling or would tentatively make its ruling if Mr. Armstrong were here, and ordered the Government to produce discovery.

Now, the Government's position is that the Government will not comply with such an order and, as a sanction, would recommend to the Court that dismissal be the proper sanction. I recommend that because that would be the normal course of events. The Defense would usually ask that the case be dismissed for noncompliance of the discovery order or some other sanction.

Let me make it clear for the record, however, that if the Defense were to—wanted to proceed to trial without the discovery, the Government would be perfectly willing to go forward with trial without providing such discovery. It's

just that the Government will not provide the discovery and I'm assuming that the Defense would then ask for some sort of sanction and the sanction of dismissal be imposed and that is the sanction that the Government would agree with. That would be the proper one.

THE COURT: One other question, then. If the Government in fact made the motion, and I consider that you have made it, at least as to those Defendants who are here, and the Court did grant that motion, what would be the Government's position as far as the release of the Defendants? I'm sure the Defense Counsel would ask that they be released forthwith. What would the Government's position be?

MR. CHO: No, the Government's position would be that they be detained pending appeal.

Let me just state, your Honor. This is not formally a motion by the Government to dismiss the case because, as the Court is aware, the Government could make that motion at any time. The Government is not making that motion. What the Government is doing is stating to the Court that it will not comply with the Court's discovery order and is suggesting as a sanction, if the Court were to impose such a sanction, that the sanction be dismissal, and that would be for purposes of allowing the Government to have a final order to appeal to the circuit.

The actual technical appeal would be the appeal of the dismissal order from the Court, and appealing that order was improper because it was based upon a—as a sanction for an illegal order. That is the order for compelling discovery.

THE COURT: All right, I think our procedure has changed—procedural posture has changed a little bit.

At first I think Government's counsel clearly said it was the Government's request that the Court dismiss the indictment. Now I think Counsel has made it clear it's not their request that the indictment be dismissed. Their

position is that they will not comply with the Court's order, and now it's on—incumbent upon the Defendants now to decide whether you will make a motion to dismiss as a sanction or ask that some other type of sanction be imposed.

Now, if Defense Counsel feel that you need some time in order to be clear as to what your position should be, then I'd be inclined just to put the case over, to actually trial it until Friday when Mr. Armstrong could be present. Defense Counsel could consult whatever sources need to be consulted and be prepared to advise the Court as to what your position would be.

But as I understand, that's the posture now. The Government is simply indicating it will not comply with the Court's order to provide the discovery that the Court previously ordered.

MR. BORTMAN: Your Honor, we have concurred and decided that, in view of the—

MR. REED: Speak for yourself.

MR. BORTMAN: Oh, I'm sorry—I thought we had agreed here.

(Pause to confer.)

MR. BORTMAN: I believe we have, your Honor, to—in view of the Government's position, to move for a dismissal at this time.

MR. REED: And I would move for a dismissal under circumstances where I believe sincerely that I can obtain a waiver of personal appearance from Mr. Armstrong at a later point and file it; for purposes of my having the power to make that motion on behalf of Mr. Armstrong this morning, I vehemently believe that the case should be dismissed. The Government is clearly refusing to comply with what appears to be very simple statistics that they can obtain.

So we sincerely ask the Court to dismiss the indictment at this time.

MR. LANNEN: On behalf of Mr. Hampton, your Honor, based on the Court's order and the Government's refusal to comply with the order, we would move that the Court dismiss the indictment against Mr. Hampton.

MS. O'CONNOR: Your Honor, on behalf of Mr. Martin, we would also move for a dismissal of the indictment based on the Government's failure to comply.

THE COURT: All right. I'm not going to rule on Mr. Armstrong's. I do feel that Mr. Armstrong either needs to be present or we need to have a waiver prior to the Court issuing its ruling.

I don't see any reason why the Court cannot go—rule on the motion made by the other Defendants and then go on to discuss the question of whether the Defendants should be detained pending appeal or whether they should be released or whether bail motions need to be made, and if the Government sees any reason why the Court should not proceed as to the other Defendants today, you might so indicate.

In other words, I won't proceed with Mr. Armstrong's today, but I see no reason why the Court could not proceed relative to the motions made by the other Defendants.

MR. CHO: The motion for dismissal—I think that'd be fine, your Honor.

THE COURT: All right, then the Court does grant the Defendants' motion to dismiss. The basis for the Court's granting the motion to dismiss—the Court believes that there is no other sanction that could be imposed. The Court believes that the discovery requested should be turned over by the Government. It's clear that Government's counsel will not produce the discovery.

The Court cannot see any other sanction that could be imposed against the Government other than a dismissal of the case, and for that reason the Court will grant the motions made by the other three Defense Counsel—or the other counsel representing those Defendants who are present today.

Now, the next question is the question of—the Government has indicated that it would ask for a stay of execution for appeal purposes, at least for the 48-hour period, and that the Defendants remain detained during that period. That is the Government's request, correct?

MR. CHO: That's correct, your Honor.

THE COURT: Defense Counsel—

MR. BORTMAN: Of course, your Honor—understand that my client is on bond.

THE COURT: Okay. As far as those that are on—that are detained, the question still has to be answered.

MS. O'CONNOR: Your Honor, on behalf of Mr. Martin, I would ask for forthwith release. Mr. Martin has been detained for seven months on a case where there is flimsy evidence—frankly, I think an unconscionable case where the Government is seeking a 35-year mandatory minimum on someone with virtually no evidence to tie him in now that the one informant has died who perhaps could have provided some evidence.

He was unable to find anyone who could post property for him. He does not come from those kind of circumstances. Now his uncle has indicated he would be willing to sign a bond for him. I was able to contact him.

Nevertheless, I think, based on the lack of evidence against Mr. Martin, a forthwith release is certainly applicable in his case, and we would request that today.

MR. LANNEN: Your Honor, on behalf of Mr. Hampton, I would also ask for a forthwith release. He has also been in custody for seven months. He has grown up in Los Angeles. His grandfather is in court today. His father is in court today. They are supporting him through this whole proceeding. He has a place to go.

The Government is refusing the Court's order and therefore instituting an appeal which will probably take a minimum of six months and could take twice or even longer than that, as we're all aware.

I don't think that Mr. Hampton is a flight risk. Basically, his family, although they are supportive and are upright citizens in the community, cannot really afford to post a bail or at least a very high bail on his behalf, and so I would request a release of Mr. Hampton pending appeal with conditions if the Court were to give it—any conditions through the Pretrial Services Department.

THE COURT: What about those—I think there are two Defendants whose counsel are not here today.

MR. LANNEN: Oh, I'm also—yes, your Honor. I would—I'm standing in for Joe Walsh on Mr. Rozelle. I'd actually have to get a little more information from Mr. Walsh on his behalf as far as a bail review.

I would ask, for the record, for his forthwith release also based on the fact that he's been in custody for seven months and that he will be in custody for a long period of time while this appeal is processed.

MS. O'CONNOR: Your Honor, if I might just add again on Mr. Martin's behalf, but also Mr. Rozelle is his brother, and so I am somewhat aware of the family circumstances. These are both lifetime members of the Los Angeles community.

When I spoke to Mr. Martin's uncle, also related to Mr. Rozelle, he said frankly Mr. Martin wouldn't know how to get out of Los Angeles County. I don't think they're a flight risk at all.

I'm not aware of Mr. Rozelle's specifics in terms of his arrest history and whatnot. I am aware of Mr. Martin's which consists of a misdemeanor arrest for illegally entering his girlfriend's apartment in the past and possession of a BB gun. He does not have any violent history, anything like that, and again, as I say, I don't believe he is a flight risk. The entire family is here.

THE COURT: What was the bail set in Mr. Martin's case?

MS. O'CONNOR: There is no bail set, your Honor.

THE COURT: The Government requested detention?

MS. O'CONNOR: Yes, your Honor.

THE COURT: And the detention hearing was originally held by the magistrate?

MS. O'CONNOR: I believe so, your Honor.

THE COURT: And was there a review by this Court?

MS. O'CONNOR: No, your Honor, we did not have a review—because of the 35-year mandatory minimum hanging, we felt it would probably necessitate property, and we could not find anyone.

As I say, the uncle is willing to sign an appearance bond if the Court should set that.

THE COURT: And how about Mr. Hampton and—well, just Mr. Hampton. Was bail set in his case?

MR. LANNEN: Your Honor, bail was not set. He was detained. It was not heard by this Court, and again, although Mr. Hampton does face considerable time in this case, it might be worth pointing out that he is called in the indictment a runner in the case, the lowest level on the ring, and also I would add that either his father or his grandfather or both would sign the appearance bond on his behalf.

MR. REED: David Reed for Mr. Armstrong. I understand the Court's concern about having Mr. Armstrong present for the formal request for the dismissal on his behalf, but in view of the fact that he is sick and in view of the fact that the Government—rather, the Court may be inclined to dismiss the case, I would ask on behalf of Mr. Armstrong for the Court to issue a forthwith release on behalf of him as well.

Now, if the Court—I don't know what the Court's position is going to be concerning the stay, et cetera, but if the Court is not inclined to issue the forthwith release, then certainly I would like to have this case put on calendar for a bail motion within the next few days, possibly Friday.

THE COURT: Let me ask Government's counsel—for what purpose is the stay? As I understand it, Counsel is

asking for a stay for 48 hours. Is it for a purpose of filing the notice of appeal with the Ninth Circuit or for making a decision within the U.S. Attorney's Office as to whether an appeal will be pursued?

MR. CHO: Well, it's both, your Honor. We have to have formal clearance from the Attorney General's office in Washington, and we'll work on that right away to get permission to do so.

And then the appeal—formal notice of appeal would have to be filed as well.

THE COURT: And is it the Government's position that you believe that the notice of appeal could be filed within the 48-hour period?

MR. CHO: Yes, your Honor.

THE COURT: Government wish to be heard any further?

MR. CHO: Yes, with regard to the forthwith release if the Court would want to hear argument.

THE COURT: You know, I don't. Since I have not reviewed any information about these Defendants and have not looked at the evidence that would be offered at trial, that's why I asked Counsel if there had been a bail review before this Court. I would not be inclined to order any of the Defendants released at this point.

What I would be inclined to do is to put the case back on calendar for a further hearing—a bail hearing, and at that point I would ask for a report from Pretrial Services, then this Court would have an opportunity to review all of the information that you're talking about now, but I really don't—have not reviewed any background information on any of the Defendants.

MR. CHO: I would concur with that, your Honor.

THE COURT: All right. What the Court's inclined to do at this point, as far as Mr. Armstrong is concerned, he does have to be present in order for the Court to rule on his counsel's motion to dismiss or either have a waiver on file,

but he would still have to be present for the Court to entertain counsel's motion to release or to set bond or whatever. I would need him present for that purpose because, if I were inclined to order his release, I would want to impose conditions and he would need to be present for that. So I think he does have to be present.

I don't know how—what his medical condition is and when he could actually appear before the Court, but I would be inclined to continue the case until Friday as Counsel requests and hopefully by that time we'll at least have some additional information as far as Mr. Armstrong is concerned.

As far as Mr. Martin is concerned and the other Defendants, I would grant the Government's request for a stay for 48 hours and would place the cases of the other Defendants on calendar for bail hearing at a time and date that—at a time that counsel feels would be appropriate, so I don't know if Friday is the best day for everyone, or if you would ask for an earlier date.

MS. O'CONNOR: We would ask for Friday, your Honor, if that's possible—either Thursday or Friday would be fine.

THE COURT: Okay. That would be as to Mr. Martin, as to Mr. Hampton, and then also as to Mr. Rozelle, so counsel should advise Mr. Rozelle's counsel that he needs to be present for such a hearing.

Is Friday good for everyone?

MR. LANNEN: Friday is good for Mr. Hampton, your Honor. I believe Mr. Walsh said that he believes that he will be in trial up till about next Tuesday, so I don't know if the Court wants to put him on calendar for Friday on the chance that he could be available or if the Court would like him to just put it on calendar himself.

THE COURT: I'd be inclined to set them all on the same day and then, if for some reason he can't be present, counsel will have more information as to what date he requests that the Court consider his matter.

MR. LANNEN: Fine.

THE COURT: Government's counsel?

MR. CHO: I have a problem with that, your Honor. I have two appeals that have to be filed by next Monday, the 11th. I would prefer to have it heard perhaps next Tuesday.

Also, I would have to have—since we're apparently going to have a bail hearing on all the Defendants, I'd have to have time to get together with the agent and pull together all the evidence necessary for a full bail hearing.

For a status conference on Friday, just to see where we're at, to formally dismiss Defendant Armstrong, no problems with the Government there, but to have a full-blown detention hearing on all Defendants, I would ask that that be put off till next week.

MS. O'CONNOR: Your Honor, I would object to the continuance. The Government was supposed to be ready for trial today. Presumably they have all the information they're ever going to have on these Defendants. I have appeals due myself, but I think it's an urgent matter. Mr. Martin's been in custody for seven months, and again particularly given the state of the evidence against him, I would ask for Friday.

MR. CHO: Your Honor—

THE COURT: I was trying to hear from other Defendants. I think I've heard from everybody now. Mr. Mack is already on bond, and the Court has granted his motion to dismiss, but have also granted the Government's request for a stay of execution for 48 hours, so there's nothing, I think, to do as far as Mr. Mack is concerned.

Now, there is no date when Mr. Mack is ordered to return to receive any additional information from the Court, and I don't know what Government's position might be in that regard.

In other words, if in fact the Government files the notice of appeal, the Government will probably be making some additional request of the Court. Mr. Mack is on bond

already, but no date—not been given any date as to when he needs to return.

MR. CHO: I guess Mr. Mack would remain—the Government would request that Mr. Mack remain out on bond pending the appeal, and that the conditions remain the same.

I guess if and when a decision is made before the Ninth Circuit, obviously his counsel will be notified if there's an argument before the Ninth Circuit. Certainly whatever the ruling is, we'll certainly have to come back to the Court on remand and he can be ordered back at that time.

THE COURT: All right, as to Mr. Mack, then, the Court would order—has granted the motion to dismiss, ordered that he remain on bond under the same terms and conditions that were initially imposed and as far as further appearances in court, his counsel will be notified and can notify him of when he next needs to appear.

MR. BORTMAN: Thank you, your Honor.

THE COURT: Could I have Mr. Mack stand, please? Mr. Mack, you should understand that your case has been dismissed. The Government will probably appeal this Court's ruling. Once the Ninth Circuit rules, the circuit could reverse the Court. If it does reverse the Court, then you would have to come back to trial in the case.

The circuit also might order—might affirm and order that the Government disclose the information that the Court has ordered and, if that were to happen, then there would be motions probably filed by counsel in the case, so you would still have to return.

So at this point you're still on bond under the same terms and conditions that were originally imposed, and your counsel will notify you when you are to return to the Court.

DEFENDANT MACK: Yes, ma'am.

THE COURT: As to the other Defendants, the Court would continue their cases until Friday, and I need some assistance from Mr. Levario as to the time.

THE CLERK: 10:00 o'clock, your Honor.

THE COURT: 10:00 o'clock on Friday for status conference, further hearing, bail review as well.

MS. O'CONNOR: Thank you, your Honor.

MR. REED: Your Honor, can that be a bail review on behalf of Mr. Armstrong as well?

THE COURT: I'm saying for everybody it will be the same. If Mr. Armstrong isn't here on Friday, then of course we won't have the bail review, but if he is present, then we will proceed with the bail review.

MR. REED: Thank you, your Honor.

MS. O'CONNOR: Thank you, your Honor.

(Proceedings concluded at 10:30 a.m.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Transcriber

Date: 1-12-93

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Case Number 92-338-CR

UNITED STATES OF AMERICA
Plaintiff,
vs.
CHRISTOPHER LEE ARMSTRONG, et al
Defendant.

NOTICE OF APPEAL
93-50031

Notice is hereby given that UNITED STATES OF AMERICA hereby appeals
to the United States Court of Appeals for the Ninth Circuit from
Name of Appellant

CRIMINAL MATTER CIVIL MATTER

[] Conviction only (F.C.Cr.P. 32(b)) [] Order (specify)
[] Conviction and Sentence
[] Sentence only (18 U.S.C. 3742)
[] Order (specify) [] Judgment (specify)
Order Dismissing Indictment as to defendants
KARON HAMPTON, ROBERT KOSKILA, FREDDIE
MARK, and Sharon Annmarie Harris
[] Sentence Imposed: [] Other (specify)
[] Bail Status: Currently detained except
for defendant MARK ONE is out on \$50,000
bond

Entered in this action on _____
Date Judgment or Order Entered on the Docket Sheet
A copy of said judgment or order is attached hereto. Jan-15-93
DATED January 6, 1993 [Signature]
Signature of Appellant or Appellant's Attorney

NOTE: Pursuant to Local Rule 17, the Notice of Appeal shall contain the names
of all parties to the judgment or order and the names and addresses of
the attorneys for each party. Also, the Clerk shall be furnished a
sufficient number of copies of the Notice of Appeal to permit prompt
compliance with the service requirements of Rule 3(d), F.R.App.

A-2 (04/89) NOTICE OF APPEAL

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263

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Pro Per: ☐ PPD ☐ Appointed ☐ CJA ☐ Pre-Order ☐ Retained

FILED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA Plaintiff, Case NUMBER 92-336-CDH

vs.
CHRISTOPHER LEE ARMSTRONG Defendant.

NOTICE OF APPEAL
93-50057

Notice is hereby given that UNITED STATES OF AMERICA hereby appeals to the United States Court of Appeals for the Ninth Circuit from

CRIMINAL MATTER CIVIL MATTER

☐ Conviction only (P.C.Cr.P. 32(b)) ☐ Order (specify)

☐ Conviction and Sentence

☐ Sentence only (18 U.S.C. 3742)

☒ Order (specify)
Order dismissing indictment as to defendant Armstrong

☐ Sentence imposed:

☒ Bail Status: Retained

Entered in this action on 1/19/93 Date Judgment or Order Entered on the Docket Sheet

A copy of said judgment or order is attached hereto.

DATED January 20, 1993 Signature of Appellant or Appellant's Attorney

NOTE: Pursuant to Local Rule 17, the Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of Rule 31(d), P.S.App.

A-2 (04/89) NOTICE OF APPEAL

JAN 21 1993

SUPREME COURT OF THE UNITED STATES

No. 95-157

UNITED STATES, Petitioner

v.

CHRISTOPHER LEE ARMSTRONG, ET AL.

ORDER ALLOWING CERTIORARI.

FILED OCTOBER 30, 1995.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

October 30, 1995